

THE GOVERNMENT PRINTING OFFICE AND
EXECUTIVE BRANCH INFORMATION
DISSEMINATION

HEARING
BEFORE THE
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY
OF THE
COMMITTEE ON
GOVERNMENT REFORM
AND OVERSIGHT
HOUSE OF REPRESENTATIVES
ONE HUNDRED FIFTH CONGRESS
FIRST SESSION

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THE GOVERNMENT PRINTING OFFICE AND EXECUTIVE BRANCH INFORMATION DISSEMINATION

THURSDAY, MAY 8, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT MANAGEMENT,
INFORMATION, AND TECHNOLOGY,
COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 311, Cannon House Office Building, Hon. Stephen Horn (chairman of the subcommittee) presiding.

Present: Representatives Horn, Maloney, Davis of Illinois, and Owens.

Staff present: J. Russell George, staff director and counsel; Mark Uncapher, counsel; John Hynes, professional staff member; Andrea Miller, clerk; and David McMillen and Mark Stephenson, minority professional staff members.

Mr. HORN. The Subcommittee on Government Management, Information, and Technology will come to order.

We are here today to examine the operations of the Government Printing Office, and especially its efforts to disseminate Government information to the public. This is no small matter. Citizen access to Government information is critical to a free society.

No one has put it better than James Madison did over two centuries ago: "A popular government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be the Governors must arm themselves with the power knowledge gives."

The Subcommittee on Government Management, Information, and Technology is a principal congressional guardian of access to executive branch information. The subcommittee's charter states that it "will ascertain the trend in the availability of government information and will scrutinize the information practices of the executive agencies and officials."

Today, we hope to hear from our expert witnesses on exactly this matter: How well is Federal information being disseminated? What improvements can be made? What is the proper role for the Government Printing Office and the Superintendent of Documents?

Information dissemination programs at the Government Printing Office include the distribution of publications to Federal depository libraries nationwide, cataloging and indexing, and distribution to

recipients designated by law. They also include distribution to foreign libraries designated by the Library of Congress, in return for which the Library receives governmental publications from those countries.

The Government Printing Office distributes about 100 million copies of government publications per year. Approximately 75 percent of all its printing needs are contracted out to private printers. Of the work handled in-house, about half is for Congress. The Government Printing Office currently employs 3,674 employees, fewer than at any time in this century.

There is concern that the administration has been reducing public access to information. Specifically, many executive branch agencies are not furnishing copies of the information they produce to the Government Printing Office for dissemination through the Federal depository libraries. Furthermore, there is concern that the administration is allowing many agencies to enter into restrictive distribution agreements that further limit the availability of agency information to the public.

We have two panels today. The first will feature two witnesses from the Government Printing Office. Michael DiMario is the Public Printer. He has worked at the Government Printing Office since 1971, and he has, at one time or another, headed each of its major program areas. Mr. DiMario will be accompanied by Wayne Kelley, who is Superintendent of Documents. Mr. Kelley was a journalist and a publisher until he was named to his current post in 1991.

The second panel will feature three witnesses. Daniel S. Jones is president of NewsBank, Inc. He is appearing on behalf of the Information Industry Association. Robert L. Oakley is governmental affairs representative of the American Association of Law Libraries. He is appearing on behalf of a coalition of library associations. Wendy Lechner is legislative director of Printing Industries of America.

We welcome each of you, and we look forward to your testimony.
[The prepared statement of Hon. Stephen Horn follows:]

DAN BURTON, INDIANA
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED FIFTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143
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**"THE GOVERNMENT PRINTING OFFICE AND
EXECUTIVE BRANCH INFORMATION DISSEMINATION"**

May 8, 1997

OPENING STATEMENT
REPRESENTATIVE STEPHEN HORN (R-CA)
Chairman, Subcommittee on Government Management,
Information, and Technology

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Mr. HORN. The tradition on the committee and all subcommittees of the Government Reform and Oversight Committee is to swear in all witnesses except Members of Congress. If you would stand and raise your right hands, we will swear in the witnesses.

[Witnesses sworn.]

Mr. HORN. The clerk will note all three members have affirmed.

We will begin with the Public Printer of the United States. A quorum is present, with Mr. Davis of Illinois.

We welcome you. Did you have an opening statement, Mr. Davis?

Mr. DAVIS OF ILLINOIS. No, sir.

Mr. HORN. Then we will proceed with the first panel and the Public Printer of the United States, Michael DiMario. He is accompanied by Wayne Kelly, Superintendent of Documents, Government Printing Office; also, Bruce Holstein, the Comptroller of the Government Printing Office.

Gentlemen, proceed as you would like.

STATEMENT OF MICHAEL DiMARIO, PUBLIC PRINTER, GOVERNMENT PRINTING OFFICE, ACCOMPANIED BY WAYNE KELLEY, SUPERINTENDENT OF DOCUMENTS, GOVERNMENT PRINTING OFFICE; AND BRUCE HOLSTEIN, COMPTROLLER, GOVERNMENT PRINTING OFFICE

Mr. DiMARIO. Mr. Chairman and members of the subcommittee, thank you for inviting me here this morning to discuss GPO's role in Federal information dissemination. As you indicated, Wayne Kelley, the Superintendent of Documents, who is seated to my left, is accompanying me, and also Bruce Holstein, GPO's Comptroller, who is seated to my right. In the interest of time, I will briefly summarize my prepared statement, which has been submitted for the record.

Mr. Chairman, an abiding commitment to public access to Government information is deeply rooted in our system of Government. GPO is one of the most visible demonstrations of that commitment. For more than a century, our mission, by law, has been to fulfill the needs of the Federal Government for information products and to distribute those products to the public.

Formerly, our mission was accomplished using traditional printing technologies. However, a generation ago, we began migrating our processes to electronic technologies, and in 1993, Congress amended Title 44 with the GPO Electronic Information Access Enhancement Act, which requires us to disseminate Government information products on-line. This act is the basis of GPO Access, our Internet information service. Latest data shows that this service was used to download more than 4.5 million Government documents electronically last month.

Today, GPO is dedicated to producing, procuring, and disseminating Government information products in a wide range of formats, both print and electronic. We provide printed and electronic information products and services to Congress and Federal agencies through in-plant processes and the purchase of information products from the private sector. In fact, as you have noted, we buy approximately 75 percent of all information products requisitioned from us, in one of the Federal Government's most successful procurement programs.

We distribute upwards of 100 million copies of Government publications every year through a variety of programs, including a low-priced sales program, and to Federal depository libraries nationwide where the information may be used by the public free of charge.

One of these items is the Citizens Guide on Using the Freedom of Information Act and the Privacy Act to request Government records, which is issued as a report by the Committee on Government Reform and Oversight. We have been distributing this item, in various editions, for many years, and it is very popular.

We also disseminate a growing volume of information via the Internet. We catalog and index Government information products, and we distribute them on behalf of other Federal agencies. We conduct all of our services in a nonpartisan, service-oriented environment that emphasizes the primacy of the customer's requirements for timeliness, quality, security, and economy, and we are committed to achieving the greatest access and equity in information dissemination, whether through printed publications, CD-ROM, or on-line.

At the bottom line, our programs reduce the need for duplicative production facilities throughout the Government, achieve significant taxpayer savings through a centralized procurement system, and enhance public access to government information.

With the growing use of electronics, there is a temptation to say that the Government no longer needs a printing capability. I think this temptation should be resisted. Last year we produced over \$700-million worth of printing services for the Government, and printing is still a major avenue of communication between the Government and the public.

The transition to full electronics is coming, but it is a long way off. We need to manage that transition effectively. Maintaining a cost-effective printing and dissemination capability for the foreseeable future gives us an important management tool.

A major problem confronting us today is the growing decentralization of Government printing activities. GPO is a primary guarantor not only of cost-effectiveness, but of public access to the comprehensive body of publications produced by the Government. When agencies do not use GPO for printing, the likelihood is that they will not only spend more, but their publications will not be put into GPO's dissemination programs where they can be accessed conveniently and equitably by the public.

The growing decentralization of Government printing is a major source of so-called "fugitive documents," documents that, by law, belong in our depository library program, but which are not included, usually because they are produced elsewhere than GPO.

Decentralization is also expanding the opportunities for Federal agencies to use other dissemination mechanisms for their information products. With increasing frequency, these mechanisms are involving copyright or copyright-like arrangements that also have the effect of impeding public access to Government information.

Two weeks ago, I testified on proposals for revising Title 44 that would address these problems, including the issue of the constitutionality of GPO's operations that has been raised by the Justice Department's Office of Legal Counsel. For the record, I do not

agree with that opinion. I think the issue of GPO's constitutionality can be addressed without sacrificing the current system of printing and distribution that serves the Government and the public well.

Mr. Chairman, Government information is increasingly valuable to American citizens and taxpayers in the information age. At GPO we provide a service which makes that information available to the public cost-effectively, comprehensively, and equitably.

GPO's continuing migration to electronic technologies, as well as the ability of our staff, are already facilitating the re-engineering of information products and processes to satisfy the changing information requirements of the Government and the public. At the same time, our traditional printing and distribution capabilities are preserving and protecting access to government information for all of our citizens.

More than a century ago, Congress, in its wisdom, designed a system in GPO for keeping America informed. That system continues to serve a vital purpose today, and we look forward to working under congressional oversight and guidance to improve the performance of our operations and programs.

Mr. Chairman and members of the subcommittee, I thank you for taking an interest in GPO and for inviting me to be here this morning. I would be pleased to answer any questions you may have.

[The prepared statement of Mr. DiMario follows:]

Mr. Chairman and Members of the Subcommittee, thank you for inviting me here this morning to discuss the role of the Government Printing Office (GPO) in Federal information dissemination.

GPO'S MISSION IN THE INFORMATION AGE

An abiding commitment to public access to Government information is deeply rooted in our system of Government. *GPO is one of the most visible demonstrations of that commitment.* For more than a century, our mission under the public printing and documents statutes of Title 44 of the U.S. Code has been to fulfill the needs of the Federal Government for information products and distribute those products to the public. Formerly, our mission was accomplished through the production and procurement of traditional printing technologies. However, a generation ago we began migrating our processes to electronic technologies, and in 1993 Congress amended Title 44 with the GPO Electronic Information Access Enhancement Act (P.L. 103-40) to require us to disseminate Government information products online. This Act is the basis of *GPO Access*, our Internet information service.

Today, GPO is dedicated to producing, procuring, and disseminating Government information products in a wide range of formats. *In GPO the Government has a unique asset that combines a comprehensive range of conventional production and electronic processing services, procurement facilitation, and multi-format dissemination capabilities to support the information life cycle needs of Congress, Federal agencies, and the public.*

We provide printed and electronic information products and services to Congress and Federal agencies through inplant processes and the purchase of information products from the private sector. In fact, we buy approximately 75 percent of all information products requisitioned from us in one of the Government's most successful procurement programs. We disseminate Government information through a low-priced sales program and to Federal depository libraries nationwide where the information may be used by the public free of charge. We also disseminate a growing volume of information via the Internet. We catalog and index Government information products, and we distribute them on behalf of other Federal agencies. Information on all of our programs and services, as well as access to a large and growing range of Government information, is available through our home page on the World Wide Web, at <http://www.access.gpo.gov>.

We conduct all of our services in a non-partisan, service-oriented environment that emphasizes the primacy of the customer's requirements for timeliness, quality, security, and economy, and we are committed to achieving the greatest access and equity in information dissemination whether through printed publications, CD-ROM, or online. *At the bottom line, our programs reduce the need for duplicative and costly production facilities throughout the Government, achieve significant taxpayer savings through a centralized procurement system, and enhance public access to Government information.*

GPO AND CONGRESS

GPO was originally established to provide Congress with *immediate, reliable service* in a work environment under its direct control. That mission continues today. We produce the daily and permanent editions of the *Congressional Record*, bills, resolutions, amendments, hearings, committee reports, committee prints, documents, stationery, and a wide variety of other products that are essential to the legislative process in Congress. We produce this work in our central office facility on North Capitol Street in Washington, DC, through the creation and storage of electronic databases of publications for printing and dissemination, as well as the provision of CD-ROM, online access, and print-on-demand services. All of this work is funded through an annual appropriation for Congressional Printing and Binding.

Support for the Cyber-Congress. We have built a core capability for electronic information and communications services to support Congress's information needs. Today, our state-of-the-art electronic systems are characterized by a complex of direct electronic linkages via CAPNET to a variety of congressional offices on Capitol Hill for data interchange. Once considered only the by-product of the print production process, digitized electronic databases of congressional information are now the primary product: they are the databases from which the *official* versions of documents are produced in print, CD-ROM, and online access formats made available to the public through *GPO Access* as well as other systems such as the Library of Congress's THOMAS information system.

Our electronic systems and staff expertise position us to support the continued development of the cyber-Congress, including implementation of the House Document Management Plan, approved by the House Oversight Committee in 1996, and a comparable Legislative Information System for the Senate. We are committed to supporting the House's effort to provide the public with access to more committee materials online, pursuant to a recent rules change.

Print-On-Demand Systems. We are using electronics to support print-on-demand systems for Congress as well. We operate a print-on-demand system in the Senate Document Room that has reduced the requirement for printing extra copies of Senate documents for storage. This system, and another print-on-demand system located at our central office facility, are both networked to congressional databases resident at GPO.

Advantages from Electronic Support. Our electronic systems provide a standardized system for use by both Houses of Congress, resulting in compatibility of production processes and uniformity in the resulting products. They provide for the interchangeable use of databases to produce different congressional publications, generating significant savings. Our systems are a centralized resource where production and dissemination equipment and staffing can be concentrated, yielding significant economies of scale. Finally, they facilitate both production and dissemination. Databases prepared for printing are easily converted into databases suitable for

CD-ROM distribution and for online dissemination via the Internet to libraries, schools, offices, and homes nationwide and around the world.

Savings from the Use of Technology. Productivity increases resulting from technology have enabled us to make substantial reductions in staffing requirements while continuing to improve services for Congress. In the mid-1970's, on the threshold of our conversion to electronic photocomposition, we employed more than 8,200 persons. Today, we have 3,674 employees on board, *fewer than at any time in this century. In the past 4 years our staffing has been reduced by 25 percent.* The reduction was accomplished while at the same time modernizing and improving our services.

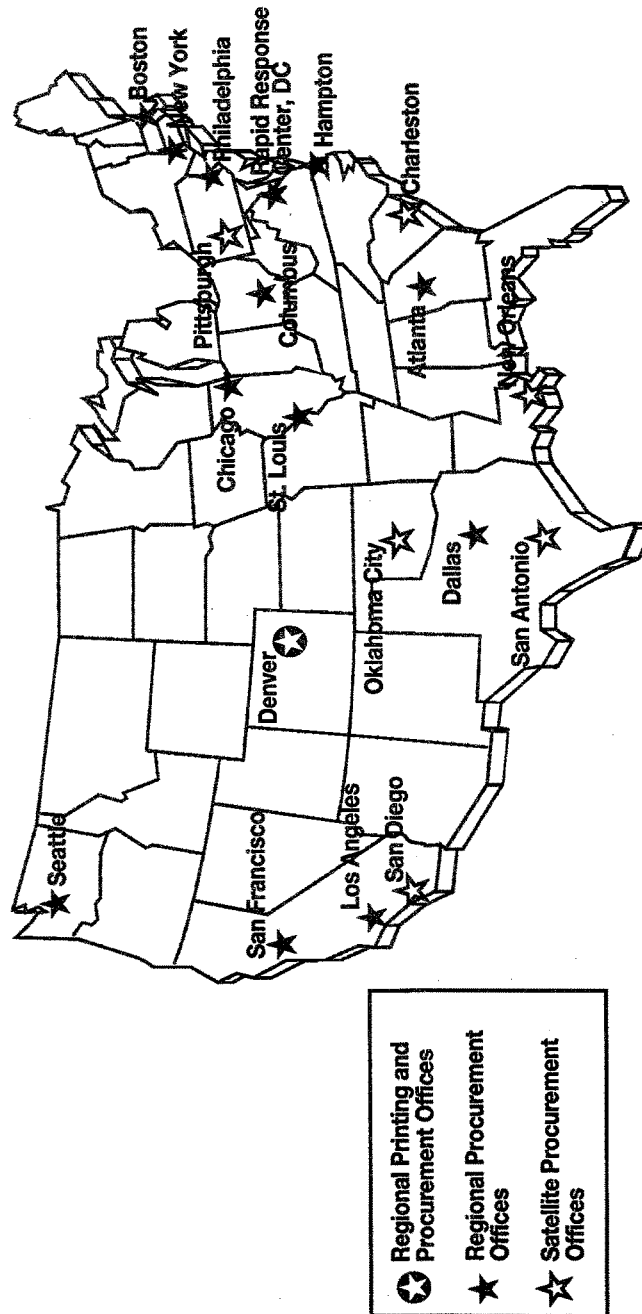
Electronic technologies have significantly reduced the cost, in real economic terms, of congressional publications. In FY 1978, the appropriation for Congressional Printing and Binding was \$84.6 million, the equivalent in today's dollars of *\$209.5 million*. By comparison, our approved funding for FY 1997 is \$81.7 million, *a reduction of nearly two-thirds in real economic terms.* This has yielded a savings to the taxpayer of *well over \$100 million per year.* The vast majority of the reduction is due to productivity improvements and staffing reductions made possible through the use of improved technology.

GPO AND FEDERAL AGENCIES

GPO's Printing Procurement Program. Approximately 75 percent of the printing and information products requisitioned from GPO are procured from the private sector. GPO historically has retained for inplant production only work which cannot be procured on a controlled, timely, and cost-effective basis. The vast majority of the work procured from the private sector is for Federal agencies in the executive branch. We provide procurement services through our central office facility and through a network of 20 regional and satellite procurement offices nationwide. All work for Federal agencies is paid for by the agencies themselves. The payments are processed through GPO's revolving fund.

Our printing procurement program saves a significant amount of money for the taxpayers. The program operates on a highly competitive basis, driving prices down. Approximately 10,000 firms—or about a quarter of the nationwide printing industry, representing nearly 200,000 employees—are registered on GPO's Master Bid List according to their equipment, staffing, and production capabilities. About 3,500 of these firms do business with us on a regular basis, ensuring intense competition for Government printing and information product contracts.

By consolidating the Government's specialized printing procurement skills and resources in GPO, agencies save money in their printing programs. Moreover, agencies achieve savings without giving up essential controls when they work through us. Most of our printing procurements are conducted through direct deal term contracts, permitting agencies to place their printing orders directly with the contractor. Our centralized program utilizes a service



infrastructure that allows agencies to directly control the vast majority of their printing needs from the point of origination.

Electronic Support for the Procurement Process. Electronic versions of printing procurement bid solicitations are now accessible from the Internet via GPO's World Wide Web home page. The electronic posting of bid solicitations has several benefits. It allows us to reduce the cost of making this information available to the public. It enables more contractors to bid on Government printing jobs, thereby increasing competition and lowering procurement costs. By posting electronic versions of these documents on the Internet, all potential bidders, even remotely located small businesses, have immediate access to additional bid opportunities. We have found that increasing the dissemination of formal bid solicitations results in more contractors submitting bids. The increase in competition also results in a decrease in contract prices, lowering the overall cost to the Government for printing. Our electronic posting initiative has generated considerable interest and enthusiasm in the printing industry.

ELECTRONIC SUPPORT FOR AGENCY PRODUCTS

Federal agencies are turning to GPO for assistance in the management of their publications and related information products through all stages of the information life cycle: the creation and/or collection of information, processing the information into a product, dissemination of the product, use and storage of the product, and product disposition through archival management.

CD-ROM Services. Since 1988 we have been a leading Government producer of CD-ROM technology, providing agencies with a complete range of CD-ROM production services. Our development services take source material from any submitted medium and convert it to a CD-ROM product, including the provision of a search engine using standard licensing agreements with three different companies. We provide test discs, quality testing and control, and graphic design work for the CD-ROM disc face and cover booklet. We procure the mastering of the data and its replication on standing CD-ROM contracts. We provide dissemination of the final product through our sales program and the FDLP without cost to the publishing agency.

In 1992, we received the annual CD-ROM Award from the Special Interest Group for CD-ROM Applications and Technology (SIGCAT), the largest CD-ROM user group in the world. The following year, the General Accounting Office cited our CD-ROM program as one of the most cost-effective in the Government, specifically noting that GPO's CD-ROM products are among the least expensive for users.

World Wide Web Services. Our resources and staff are also involved in assisting agencies with World Wide Web and Internet services. Electronic processing work performed by our staff resulted in the databases available on *GPO Access*. For the World Wide Web, we provide database development services, mounting on our servers, database maintenance, access based on agency needs, promotion of the service, training, and user support. *GPO Access*

features a unique service in making most databases available not only in ASCII format but in Portable Document Format (PDF), which provides a searchable database that exactly replicates the printed product. For Government information users for whom authenticity is critical, the PDF feature is an essential feature.

Expert Publishing Services for Federal Agencies. GPO's Digital Information Technology Support Group (DITS Group), a unit of our Printing Procurement Department, provides expert publishing services to support the increase in electronic publishing submissions from Federal agencies. The services include one-on-one desktop publishing (DTP) consultation for correct file creation techniques; customer outreach by way of on-site digital publishing seminars; researching industry trends in digital publishing and disseminating pertinent information to agency editor/writers, printing personnel, project designers, publishers and information management personnel; and creating official publications and forms designed to make digital publishing more consistent, cost effective, and customer friendly.

The New Commerce Business Daily. We recently entered into an alliance with the Department of Commerce in the development of a new *Commerce Business Daily* (CBD). This new joint project has succeeded in making CBD information freely accessible in real-time over the Internet while preserving the printed version for those who still need to receive daily issues in that form.

The new CBD has made it easier and more timely for agencies to electronically submit notices for inclusion in CBD, significantly reduced the cost per notice for these submissions (from \$18.00 to \$5.00), allowed for the continuation of a billing and reporting process for these charges, provided support to both agencies and users of the CBD, reduced the time necessary to typeset and compose the printed version, and enhanced the delivery of the final copy to the printing contractor for the production of the daily printed issues. It has also enabled commercial value-added providers who offer CBD products to receive the daily CBD information much faster, in an enhanced format, and at a 20 percent reduction in cost. On April 21, 1997, our CBD partnership with the Commerce Department was the recipient of a "Hammer Award" from the National Performance Review.

RELATED SERVICES FOR FEDERAL AGENCIES

Inplant Services. In addition to procuring printing for Federal agencies, GPO produces work in our central office plant and regional printing plant in Denver. A significant portion of the agency work produced inplant is associated with the *Federal Register*, and includes the *List of Sections Affected* and the *Code of Federal Regulations*. Other work includes U.S. passports, postal cards, the *U.S. Budget*, and other jobs that are performed by GPO due to concerns for cost, timeliness, and control over sensitive Government information.

The continued need for GPO's regional printing plants has declined. In response, we have closed plants in Chicago, Seattle, San Francisco, and New York, and previously a separate

printing and reproduction facility at the Washington, DC, Navy Yard was consolidated with GPO's central office facility. A facility in Alaska, transferred from the GSA, has also been closed. The remaining plant in Denver continues to satisfy regional production and security printing needs.

Customer Services. GPO's Customer Service Department works directly with Federal agencies to ensure that their printing and information product needs are met. Technical assistance to agencies provided by our staff often achieves significant savings for agencies. We work closely with the Interagency Council on Printing and Publications Services and the Federal Publishers Committee. These organizations, representing Federal printing and publishing officers from throughout the Government, serve as valuable forums for listening to the ideas and concerns of our customer agencies. In addition, our departmental account representatives are involved in hundreds of meetings with customer agencies and commercial contractors each year. One unit of our Customer Service Department, the Typography and Design Division, provides graphic design, illustration, consultation, photographic, video, and quality control services, such as press sheet and bindery inspections, to customer agencies. This unit provides state-of-the-art computerized graphic design and composition services to support agency printing requirements.

Recycled Paper and Vegetable Oil-based Inks. We sell blank paper supplies to Federal agencies in the Washington metropolitan area, passing on significant savings through savings we achieve in bulk purchases. Under the guidance of the JCP and also working in cooperation with the Environmental Protection Agency and the Federal Environmental Executive, this program has been instrumental in advancing the Government's utilization of recycled paper and related materials, including recycled copier paper. We also have successfully implemented the provisions of the Vegetable Ink Printing Act of 1994, on which this Subcommittee held hearings. This Act requires all Federal lithographic printing to be performed utilizing inks containing vegetable-based oils in specified percentages. Our printing procurement contracts contain standard provisions for the utilization of recycled paper and vegetable-based inks in Federal jobs.

Institute for Federal Printing and Publishing. GPO's Institute for Federal Printing and Publishing coordinates training in printing and publishing for customer agencies and entities. Course offerings include "Resources for Publishing," "Publishing Media," "Getting the Best from Desktop Publishing (DTP)," "Introduction to Document Preparation for World Wide Web (WWW) Publishing," "Introduction to Printing Processes and Terminology," "CD Publication," "Proofs and Press Sheet Inspections (PSIs)," and "Scanning Black-and-White Photos for DTP." The Institute is developing two new classes, "Introduction to Adobe Acrobat--A Portable Document Format" and "Innovative Internet Marketing Techniques for the Government." In addition to courses, the Institute provides related information services. Well over 5,000 individuals, representing all three branches of the Federal Government, have attended the Institute's courses to date.

GPO AND INFORMATION DISSEMINATION

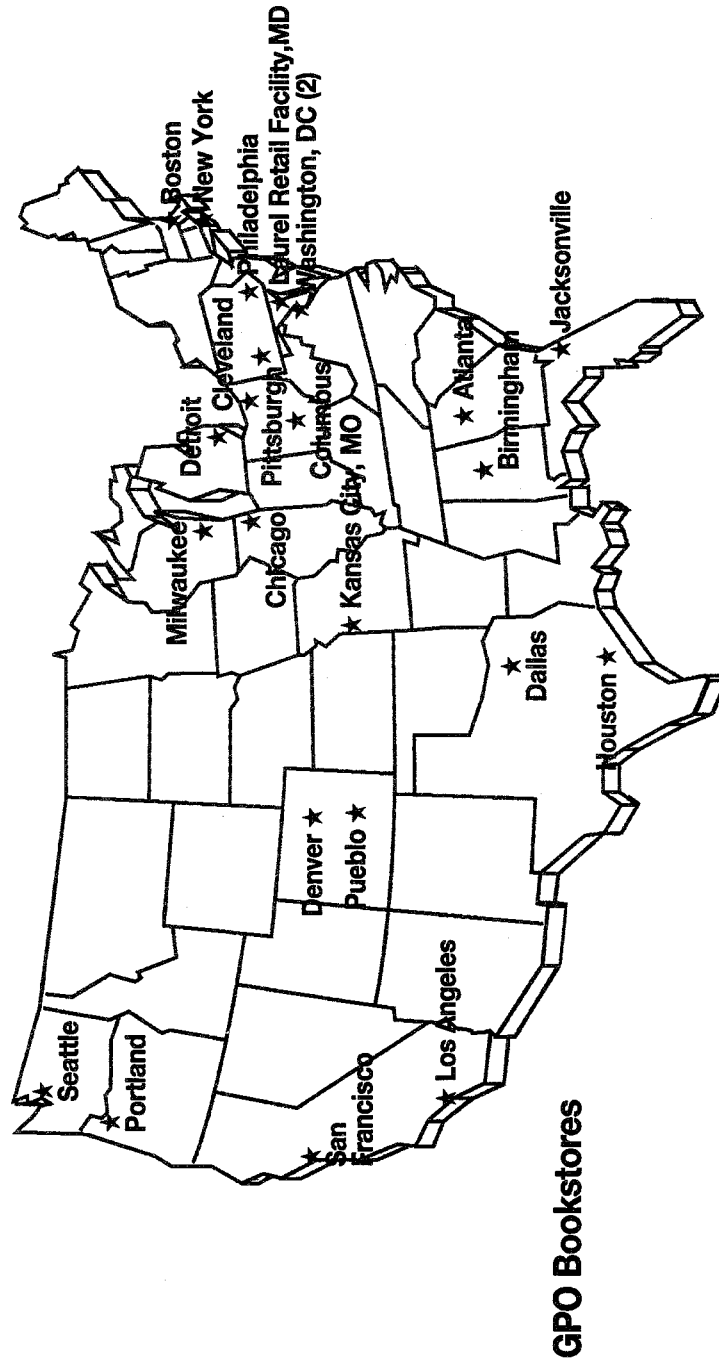
The Printing Act of 1895, which is the basis for the public printing and documents statutes of Title 44 of the U.S. Code, relocated the Superintendent of Documents function from the Interior Department to GPO. By linking the authority for the distribution of documents with GPO's printing operations, Congress created an effective system for ensuring comprehensive public access to the publications produced by the Government. As the success of *GPO Access* demonstrates, this linkage continues to be an effective means for the development and dissemination of electronic databases in the Information Age.

The information dissemination programs of GPO's Superintendent of Documents include the distribution of publications to approximately 1,400 Federal depository libraries nationwide, cataloging and indexing, distribution to recipients designated by law, and distribution to foreign libraries designated by the Library of Congress which in turn agree to send copies of their official publications to the Library pursuant to international treaty. These programs are funded by the annual Salaries and Expenses Appropriation of the Superintendent of Documents.

The Superintendent of Documents also operates a nationwide sales program. This program, the Government's single largest information dissemination network, operates 24 bookstores in major metropolitan areas around the U.S. as well as an extensive order service equipped to receive mail, phone, fax, and Internet-based orders for publications nationwide and worldwide. This program is funded entirely by revenues earned on sales of publications. The Superintendent of Documents also distributes publications for Federal agencies which reimburse us for comprehensive warehousing and dissemination services. Altogether, we distribute about 100 million copies of Government publications per year through these programs (not including information made available online).

GPO Access. *GPO Access* provides free access to more than 70 Federal databases, including the *Congressional Record*, the *Federal Register*, the *Commerce Business Daily*, Supreme Court opinions, congressional bills and reports, and other publications, as well as Government Information Locator Service (GILS) records for a growing number of Federal agencies. The first online service of its kind established by Congress, *GPO Access* allows users to locate a wide variety of electronic products available via the Internet and to order Government publications online. *GPO Access* is the only Government online service providing access to a wide range of information from all three branches of the Federal Government, and the only service providing *official* access to this important Government information. Currently, nearly 3 million documents are retrieved from *GPO Access* every month, and the number continues to grow. In March 1997, retrievals topped 4 million. During peak usage periods there are about 15,000 *GPO Access* sessions per hour.

GPO Access has drawn praise from a variety of sources, including the library community (which gave *GPO Access* the 1995 James Madison Award), the Federal technology community, the legal community, and others. In December 1996, in a guest column in *Roll Call*,



representatives of the Congressional Accountability Project and the Heritage Foundation together called *GPO Access* “an enormous success.” In January 1997, OMB Watch released a report on Government Information Locator Services which noted that “*GPO Access* has become the largest single location for GILS services and records in the Federal Government,” and that “GPO should be seen as an example to agencies that are struggling with their GILS implementation.”

THE FEDERAL DEPOSITORY LIBRARY PROGRAM (FDLP)

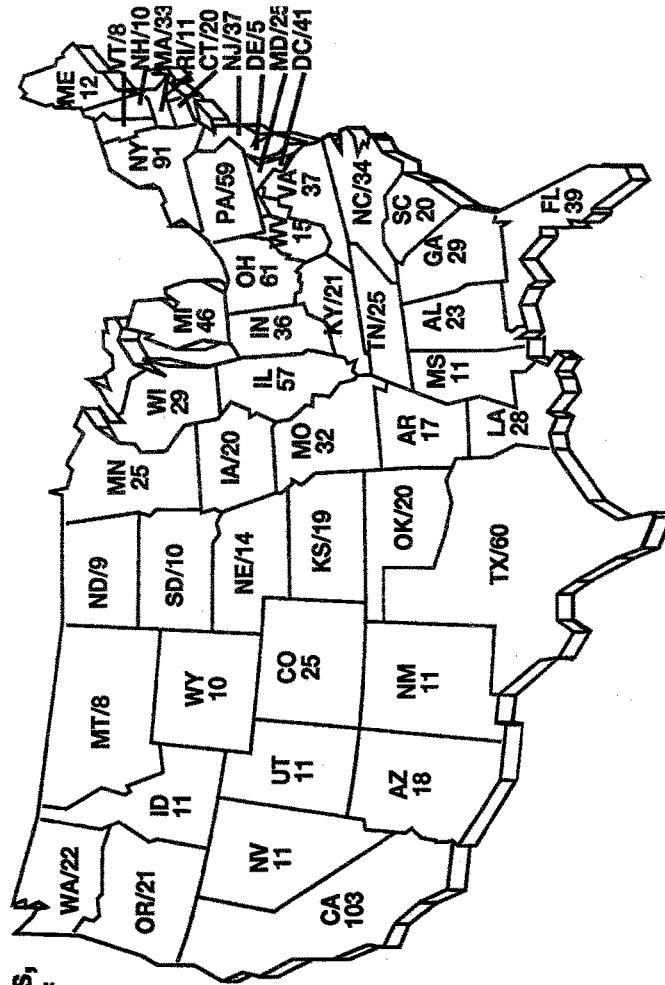
Principles. The dissemination of Government information to libraries for the use of the public began in 1813, making the FDLP America’s oldest “freedom of information” program. From its beginning, the FDLP has been built on several underlying principles:

- A well-informed citizenry, cognizant of the policies and activities of its representative Government, is essential to the proper functioning of democracy.
- The public has a right to Government information which has been prepared and published at public expense.
- The Government has an obligation to ensure the availability of, and access to, public information at no cost to the user.
- The publications provided through the FDLP are a permanent and official source of Government information.
- The public, participating libraries, and the Government all benefit from the efficiencies afforded by a centralized distribution system, such as the FDLP, which ensures the wide availability of Government publications at no charge to the user.

Statutory Requirements. Libraries are designated as depositories by Senators and Representatives as well as by law. Under the law, we send the libraries copies of all Government publications processed through GPO that are not purely of an administrative nature, cooperatively sponsored, or classified for reasons of national security. These copies are paid for by the annual Salaries and Expenses Appropriation of the Superintendent of Documents. If Federal agencies themselves produce publications that belong in the FDLP, they are required by law to pay for the production and distribution of those copies sent to the depositories. In return for receiving Government information products at no cost, the libraries must make them available to the public without charge and provide appropriate assistance to users.

The majority of the depository libraries are selective depositories which tailor their Government publications acquisitions to local needs, choosing from among 7,000 organizational and series categories. Fifty-three libraries, or roughly one per State (depending on size and resources, some States have no regionals while others have more than one), are regional depositories that receive every publication distributed by the FDLP. They are required to retain permanently every Government publication they receive.

**Federal Depository Libraries,
by State and Territory, as of
February 28, 1997
(total=1,372)**



Alaska/8
Hawaii/11

American Samoa/1
Panama Canal Zone/1

Guam/2

Micronesia/1

Puerto Rico/5

Virgin Islands/2

Northern Mariana Islands/1

Users. Based on 1995 data, we estimate that *750,000 to 950,000 persons use FDLP information each month*. A 1989 study estimated a minimum of 670,000 depository users per month in academic and public libraries.

Workload. In FY 1996, nearly 16.4 million copies of about 57,000 titles were distributed to depository libraries in paper and microfiche. In addition, we distributed 639 titles in tangible electronic formats, mostly CD-ROM. All *GPO Access* databases and services are available to depository users. Our locator services point to an additional 971 agency titles, and there are 1,148 *Monthly Catalog* records hot-linked to agency Internet sites.

Library Participation. There are now 1,372 depository libraries, including the 53 regionals. Of these, 55 percent are academic libraries, making the FDLP a major component of the Nation's education and research programs. Another 20 percent are public libraries, 11 percent are law school libraries, 6 percent are State libraries, 5 percent are Federal agency libraries, and the remaining 3 percent are special libraries. All Federal depositories are now expected to offer public users access to computer work stations with a graphical user interface, CD-ROM capability, Internet connections, and the ability to access Government information via the World Wide Web. However, there are still some depositories which cannot fully handle all electronic Government information offerings.

Continuing Justification for the FDLP. The FDLP will continue to be needed even as Federal agencies put more information on the Internet. The FDLP, funded out of legislative branch appropriations, is the means by which Congress asserts its historical role in keeping the American public informed about the activities of the Government.

Depository libraries have developed skills and collections based on the needs of their local constituents. This affords the public a local setting in which they can use Government information at no charge, regardless of whether they own or can operate a computer, and be assisted by trained Government information professionals.

As authorized by P.L. 103-40, GPO creates a variety of electronic "Pathway" locator services, which enable users to identify and connect to agency electronic resources. Since these activities are funded by the FDLP appropriation, the locator services sponsored by the FDLP may be used at no cost by the public. Within our suite of locator services, the *Monthly Catalog* on the Web is unique in how it locates both physical items in depository libraries and agency products on the Internet.

The FDLP is the vehicle which provides permanent public access to Government information. Copies of physical items are permanently held for public use in the regional depository libraries. GPO, acting in partnership with other Program stakeholders, including the National Archives and Records Administration and libraries which elect to participate, is leading an effort to ensure that agency Internet products are permanently retained and made accessible to the public.

It will be many years, if ever, before all Government information is available electronically. In the meantime, it is essential to have a single program which is charged with acquiring and distributing the vast array of printed products which the Government produces. Neither libraries nor the public would be well served by having to contact scores of individual agencies for the information they need.

Fugitive Documents. Many publications produced by the Government fail to be included in the FDLP. Documents that belong in the Program, but which are excluded, are known as *fugitive documents*. Their absence from depository library collections impairs effective public access to Government information. While many studies of the fugitive document problem have been conducted, the exact number of publications that are not in the FDLP has been difficult to isolate. Sometimes administrative errors are made by GPO in document selection and distribution. Most commonly, however, documents become fugitives from the Program due to their production outside of GPO, such as in agency printing plants. There is also a growing number of fugitive documents due to increased agency use of electronic systems to produce and disseminate their own documents.

We recently made an estimate of the number of fugitive publications today. In FY 1996, nearly 57,000 unique titles were included in the FDLP, including some 14,000 Department of Energy (DOE) reports. *We estimate that about 50 percent, or 55,000, of the tangible Government information products which are in the scope of the FDLP are not being distributed through the Program.* This number coincidentally approximates the estimated 40 percent of printing and reproduction expenses that are currently by-passing GPO. These publications are primarily those of a scientific and technical nature which are not printed through GPO and the originating agency did not provide copies for depository distribution as required by Title 44.

Most of the missing publications were provided to the National Technical Information Service (NTIS) of the Commerce Department, and we derived the number of 55,000 in the following manner. In FY 1996, NTIS took in about 160,000 scientific, technical, and business-related titles, most but not all of which were published by the Government. NTIS's intake included about 20,000 from DOE, 30,000 from the Defense Technical Information Center (DTIC), 6,000 from NASA, and 3,000 to 4,000 from the Commerce Department, as well as so-called "legacy collections" extending over a number of years, such as 10,000 titles from the now-defunct Bureau of Mines.

Based on our experience with DOE, we estimate that about 70 percent or 112,000 of NTIS's total intake belongs in the FDLP. Compared with the 57,000 titles in the FDLP in FY 1996, this leaves about 55,000 fugitive titles which should have been provided to GPO by the publishing agencies, had they fully complied with Title 44 requirements.

Fugitive documents defeat the purpose of the FDLP and undermine the public's ability to access information critical to their lives. Historically, the FDLP has relied heavily on the ability of the Program to automatically obtain material as it is produced or procured through GPO. With

the growing emphasis on electronic dissemination, and decreasing compliance with statutory requirements for agencies to use GPO, identifying and obtaining information for the FDLP is becoming increasingly difficult.

FDLP Compliance Issues. When an agency uses GPO for production or procurement of a publication (defined in section 1901 as "informational matter which is published as an individual document at Government expense, or as required by law"), GPO ensures that distribution is made through our own processes. If a publication is produced elsewhere than GPO, the publishing agency is required to supply the requisite number of copies to GPO, at its own expense, for dissemination to depositories.

GPO is confronted with two kinds of compliance issues today. First, a number of Federal agencies are seeking new methods of printing information gathered at public expense. These methods do not involve GPO and, as a result, they impede or prevent effective public access to critical Government information. I have reported previously to Congress on several such instances, including such publications as *Big Emerging Markets*, *U.S. Export Administration Regulations*, and *U.S. Industrial Outlook*.

Other efforts are ongoing by agencies that often involve allowing third parties to copyright the information or impose copyright-like restrictions on it. The result is that the information does not get produced or procured through GPO, and the agencies do not provide copies to GPO for distribution to depositories. A recent example of this is the *Journal of the National Cancer Institute*. For many years the National Cancer Institute (NCI) procured its *Journal* (JNCI), a major publication devoted to cancer research, through GPO and it was distributed to depository libraries. In January 1997, however, the NCI notified GPO that it had signed a Cooperative Research and Development Agreement (CRDA) with Oxford University Press, under which "the name of the publication will be retained, and Oxford will assume all responsibility for printing the Journal and will hold copyright to the Journal's content" (emphasis added). According to the letter received by GPO, the JNCI "has been privatized, and effective January 1, 1997, ownership of the Journal will be transferred from the National Cancer Institute to Oxford University Press-USA, Inc." The letter also stated that "[b]ecause the Journal is no longer a publication of the U.S. Government, copies of the Journal and JNCI Monographs will not be provided to the Depository Library Program nor will sales copies be available at the GPO bookstore." At the time of this notification, GPO was receiving 827 copies of each issue of JNCI for distribution to depository libraries. We have no further information on the terms and conditions of the CRDA between NCI and Oxford University Press because the NCI's legal counsel has informed us that the details of the CRDA are not public information.

The second compliance issue involves publications in electronic formats. Several agencies have taken the position that Title 44 does not apply to Government information in electronic formats. OMB's Circular No. A-130, "Management of Federal Information Resources," requires agencies to cooperate with GPO for print publications, but only "encourages" cooperation for publications in electronic formats and provides agencies with a rationale for exempting electronic

information products from the FDLP based on cost. An example of this is our recent experience with the NTIS *Order Now* CD-ROM. NTIS recently converted its printed sales catalog to a quarterly CD-ROM subscription called *Order Now*. NTIS did not procure this product through GPO. Although NTIS makes this catalog available online on a no-fee basis to depository libraries, the online product does not include the two years' worth of abstracts and indexes available on the CD-ROM. This makes the CD-ROM more complete and useful than either the online or former printed products. NTIS expressed a willingness to make the CD-ROM available as a benefit to the public and as a promotional tool for their sales program, provided GPO pays the retrieval software licensing fees. After due consideration, it was decided that the Superintendent of Documents could not pay these fees, and that since the CD-ROM was not procured through GPO, NTIS was obligated to provide copies to the FDLP under section 1903 of Title 44. In a letter to the Staff Director of the JCP concerning this matter, NTIS made the statement that "[a]t no time did we consider this to be a question of compliance with Title 44," apparently based on the fact that the publication in question is electronic rather than print. However, without the NTIS *Order Now* CD-ROM, it will be more expensive for depository libraries to locate and purchase scientific and technical documents. More broadly, such attempts to evade the requirements of Title 44 represent a serious challenge to free public access to Government information through the FDLP.

We believe that *the spirit and intent of the law since the FDLP's founding in 1813 has been to make information produced at taxpayer expense available to the public through depository libraries regardless of format*. In a 1990 opinion, GPO's General Counsel stated, "[i]t is our opinion that Congress did not intend to carve a distinction based upon the technology employed to disseminate the Government publication and that Title 44 U.S.C. Sec. 1903 governs regardless of whether the publication is in the traditional ink-on-paper format or some new medium." Congress itself created *GPO Access* in large part to provide for online dissemination of Government information to depositories. While we make every effort to work closely with agencies to ensure the inclusion of their information products in the FDLP in all formats, the continuing agency practice of not providing electronic products to the FDLP is creating gaps in information availability to the public.

Transitioning the FDLP to a More Electronic Basis. In spite of the contention that electronic information products are not required to be included in the FDLP, Congress has encouraged us to transition the Program to a more electronic basis. The Legislative Branch Appropriations Act for FY 1996 required GPO to conduct a study to identify measures necessary for a successful transition to a more electronic FDLP. In response to direction from Congress for broad consultation, GPO formed a group comprising representatives from GPO, the JCP, the Senate and House Appropriations Committees, the Senate Rules and Administration Committee, the House Oversight Committee, the House Government Reform and Oversight Committee, OMB, the Congressional Research Service of the Library of Congress, the National Archives and Records Administration, Federal publishing agencies, the Administrative Office of the U.S. Courts, the depository library community, and others. The final report, titled *Study to Identify*

Measures Necessary for a Successful Transition to a More Electronic Federal Depository Library Program, was submitted to Congress in June 1996.

Study Conclusions. Two major conclusions emerged from the study. The first was strong support for retaining the authority for a broad-based public information program in the legislative branch. High value was placed on the presence of the FDLP in every congressional district to directly serve the public in local library settings.

There was also strong support for having a single entity in the Superintendent of Documents to coordinate library-related information dissemination activities. The depository library community has consistently affirmed the utility and cost-effectiveness of a "one stop shopping" approach to acquiring Government information. The study participants agreed that it is not only possible but desirable to increase the dissemination of electronic information to depository libraries within the overall structure of current law and program operations, and that having a central entity to assist libraries and the public in accessing electronic Government information in a distributed environment is more vital now than ever.

Strategic Plan. The Strategic Plan included in the final Study Report proposes a gradual transition during the period FY 1996-FY 2001. Under the plan, the FDLP will provide official Government information products in a variety of formats to depository libraries. Incorporating electronic Government information into the FDLP will augment the traditional distribution of tangible products with connections to Government electronic information services such as Internet sites. Electronic information will be accessible to the public directly or through depository libraries from a system of Government electronic information services administered by GPO, other Government agencies, or institutions acting as agents for the Government. The FDLP will identify and connect users to electronic information services of other agencies or, when appropriate, obtain electronic source files from agencies for mounting on *GPO Access*. Tangible Government information products will be distributed to libraries, including CD-ROMs, diskettes, paper, or microfiche, as appropriate to the needs of users and intended usage.

The FDLP will ensure that electronic Government information products are maintained for permanent public access, in the same spirit in which regional depositories provide permanent access to print products. Effective public use of Government information, especially in the less-structured environment of the Internet, also depends on the ability of users to identify and locate the desired information. Through continuation of its cataloging services, and the development of "Pathway" information locator services, the FDLP will meet this need.

RELATED ISSUES

GPO and Other Federal Printing and Reproduction Activities. Despite the requirement in section 501 of Title 44 that all printing be performed through GPO, with limited exceptions, there is a substantial amount of work that is not performed through our operations. The problem of work by-passing GPO has been a continuing concern. As several

studies have concluded, there are significant savings when printing and publications are obtained through GPO's cost-effective operations. Utilization of GPO also ensures that Government publications and information products will be included in our sales program and do not become fugitive publications from the FDLF. To the extent that work by-passes GPO, there is a potential for higher than necessary costs as well as impaired public access to important Government information.

One indicator of the amount of work by-passing GPO is in the object class analysis for the FY 1998 Budget published by OMB. This analysis indicates that printing and reproduction (object class 2400) for the Federal Government totaled \$1.747 billion in FY 1996. However, this amount appears to double-count the value of GPO's printing procurements, first in the amounts budgeted by each agency and second in the figure reported as the aggregated cost for reimbursable obligations. If the double-counting is subtracted from total obligations, the result is \$1.231 billion. Of this amount, GPO handled approximately \$544 million in commercial procurements, \$84 million in congressional printing, and \$112 million in other in-house printing, yielding a total value of Federal printing currently by-passing GPO of approximately \$491 million, about 40 percent of the total. We believe the printing by-passing GPO is primarily performed in-house by Federal agencies, although there may be some procurement directly by agencies.

Reclaiming Work Covered by Title 44. Some portion of the work that is currently bypassing GPO is probably being done in violation of Title 44, but not necessarily all of it. Some printing is specifically exempted by law from the requirement to use GPO, such as printing for the national security agencies. There is also some printing that is performed legitimately in agencies in support of limited administrative requirements, such as through waivers for internal plants issued by the JCP. We know there is a need in the agencies for a capability to produce quick turnaround printing to support administrative operations, and we do not have a problem with that.

The problem comes when printing capabilities established for limited internal administrative purposes are expanded to produce printing needs that can be more cost-effectively performed through GPO's procurement program, and when agencies fail or refuse to provide publications produced internally for public distribution through GPO's programs. We have commented previously in other testimony before Congress on this situation, particularly with respect to the operations of the Defense Automated Printing Service (DAPS). In my view, agencies should be equipped only with the capacity necessary to fulfill either their own limited administrative needs or, as in the case of the General Services Administration (GSA), to support the limited internal administrative needs of multiple agencies grouped in close physical proximity through the central administrative support unit (CASU) concept.

I have previously recommended a review, to be ordered by Congress, that would determine the extent of printing being performed in agencies that should come through GPO. The review could be performed by the General Accounting Office (GAO) with GPO assistance. Action could then be taken to direct this printing to be performed through GPO. The necessary

compliance mechanism for Title 44 is in section 207 of the Legislative Branch Appropriations Act for FY 1995. That provision enacted a permanent requirement that no appropriated funds may be used by agencies for the procurement of printing related to the production of Government publications unless such procurement is by or through GPO, with limited exceptions. Once a review determines which printing should appropriately be requisitioned through GPO, this enforcement mechanism can be utilized by the proper enforcing authorities, such as agency inspectors general, to ensure compliance.

Expansion of Agency Authorities to Conduct Printing and Dissemination. I have also recommended that Congress examine the authorities of other agencies to perform printing and dissemination functions. There are instances where these authorities are being used to conflict with functions that GPO is required to perform.

A year ago, during the conduct of a study concerning the electronic transition of the FDLP, the Congressional Research Study of the Library of Congress compiled a list of the various statutes authorizing the dissemination of Government information to the public. Approximately 400 statutes were identified, although only a handful are of real significance to GPO in terms of conflicting authorities. These are the statutes governing the operations of the National Technical Information Service (NTIS) of the Department of Commerce, those that authorize the Federal prisons to perform Government printing (Federal Prison Industries, or UNICOR), and laws that authorize printing for other Federal agencies by the General Services Administration (GSA).

In each of these cases, statutes were originally enacted for sound but limited public policy purposes--to provide for the dissemination of scientific and technical information resulting from Federal research to American business (NTIS), the use of Federal prisoners to perform labor-intensive work to keep them occupied (UNICOR), and the performance of administrative printing as a centrally-located service for Federal agencies physically located together in the field (GSA). However, in recent years operations conducted under these authorities have been expanded beyond their original intent to conflict directly with GPO's statutory mission.

NTIS is using its authority to establish printing and dissemination arrangements for a wide range of information products, sometimes resulting in copyright or copyright-like restrictions on the information that was originally generated at taxpayer expense. UNICOR has invested in long-run printing equipment as a revenue-generating measure, equipment that paradoxically leads to idle rather than busy prison labor. GSA has established cross-servicing arrangements for its printing and duplicating plants to assist agencies in some cases with a wide variety of printing, expanding beyond its original CASU authority.

These operations remove work from the GPO procurement stream and frequently result in decreased public access when the publications are not made available to the Superintendent of Documents for dissemination. I have recommended that Congress review the operation of these authorities to ensure that they are staying within the original legislative intent.

Justice Department Opinion. A May 1996 opinion of the Justice Department's Office of Legal Counsel (OLC) claims that GPO's "extensive control" over executive branch printing violates the constitutional doctrine of separation of powers. The opinion asserts that the Justice Department will not cooperate in the enforcement of Title 44 requirements. This assertion is now being used by some agencies as a pretext for avoiding GPO for the production and distribution of their publications. The result is that the taxpayers will have to pay more for Government printing when GPO's cost-effective systems are not utilized, and that fewer Government publications will be made available for distribution to the public.

I think the OLC's 1996 opinion was wrongly decided. GPO has no "extensive control" over executive branch printing. Under Title 44, we cannot refuse to fulfill an executive branch requisition for printing, and we have no control over the editorial or information content of executive branch publications. Our job is purely ministerial. We ensure that printing requisitions are fulfilled in the most economical and timely manner possible, and provide for the cost-effective, comprehensive, and equitable dissemination of Government information to the public through information products obtained with GPO funds. These functions are performed under the authority of the Public Printer who, like many officers in the executive branch, is appointed by the President and confirmed by the Senate and serves solely at the pleasure of the President.

The source of the problem is not *where* GPO is located in the Government's organization chart. GPO has operated effectively in its current location for more than a century. The issue instead is the entanglement of the JCP's control with GPO operations under several provisions of Title 44. The OLC's 1996 opinion stated as much when it said, "the constitutional doctrine of separation of powers forbids Congress from vesting non-legislative functions -- specifically, in the case of your inquiry, executive functions -- in the GPO *if Congress retains control over the GPO*" (Memorandum for Emily C. Hewitt, General Counsel, General Services Administration, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: Government Printing Office Involvement in Executive Branch Printing, May 31, 1996, p. 9, emphasis added).

Indeed, previously the OLC in other opinion memoranda had taken the far more limited position that the separation of powers problem lies in the statutes authorizing direct JCP control over executive branch printing. Moreover, in 1993 the OLC opined that the statutory requirement in section 207 of the 1995 Legislative Branch Appropriations Act,

...does not violate the separation of powers by delegating executive authority to the GPO...It does not give the GPO the authority to refuse to print any materials, but merely requires that printing be procured "by and through" the GPO. Moreover, because 44 U.S.C. 1101 provides that "the Public Printer shall execute such printing and binding for the President as he may order and make requisition for," the executive branch retains its ability to ensure that materials are printed. (Memorandum for Emily C. Hewitt, General Counsel, General Services Administration, from Walter Dellinger, Assistant Attorney General, Office of Legal

Counsel, Re: General Services Administration Printing Operations, September 13, 1993.)

My view is that the transfer of JCP authorities to the Public Printer, who would exercise them as a Presidential appointee, would resolve the problem of congressional control over executive branch printing. Such a transfer, representing a direct and surgical approach to the matter, would leave intact the operational requirements for GPO, including the requirement in 44 U.S.C. 501 that all Government printing be performed through GPO as well as the enforcing mechanism in section 207 of the 1995 Legislative Branch Appropriations Act.

GPO's "Monopoly" on Printing. The National Performance Review (NPR) called for ending GPO's so-called "monopoly" on Government printing by decentralizing the authority for executive branch printing to the agencies themselves, as well as the responsibility for disseminating Government publications to depository libraries. However, the premise that GPO has a "monopoly" on Government printing is faulty. A monopoly confers on an organization the means to exercise exclusive control over the provision of a specific commodity. GPO cannot be accurately characterized as exercising this kind of control over Government printing.

As I've already noted, GPO is not the only organization providing Government printing. There are probably more than 100 printing plants operated by other Federal agencies under the authority of waivers originally issued by the JCP. In addition, agencies operate a number of other printing and duplicating facilities, as OMB has found in the past. Title 44 and section 207 of the 1995 Legislative Branch Appropriations Act contain limited provisions for agencies to contract for their own printing, and there are also a number of agencies, such as the national security agencies, that are authorized by law to perform their own printing.

Exclusive control over printing prices is denied to GPO in the area of printing procurement. The prices of the work performed by thousands of commercial printers for GPO are determined by the competitive forces of the marketplace, not by GPO, which adds only a marginal surcharge to cover the costs of procurement services. Most executive branch printing sent to GPO is purchased from the private sector, subjecting the vast majority of all Government printing to intensely competitive economic forces rather than any kind of monopolistic control.

Finally, the way we conduct business for executive branch customers undermines the claim that GPO is a "monopoly." GPO's mission is to fulfill the customer's printing needs. We provide a capability to produce over 100 different products and services ("books" alone constitute only one such product category), and we maintain an extensive equipment line, a sophisticated range of graphic design services, a highly trained production and procurement workforce, a master bid list of a vastly diversified range of printing providers in the private sector, and specialists in marketing, sales, and other Government information mechanisms to help meet agency printing and dissemination requirements. The capability to provide such a diversified range of products and services--regardless of how uneconomical some of these capabilities may occasionally be to

maintain--is not the hallmark of a monopoly, which typically bends customer demand to suit its needs.

Decentralizing Printing Authority to the Agencies. The 103rd Congress considered acting on the recommendations of the NPR with respect to printing and dissemination but rejected them. However, since then the Office of Information and Regulatory Affairs (OIRA) in OMB has continued to advocate the decentralization of printing authority to the agencies. OIRA has claimed that agencies would be better off procuring their own printing just as they now are able to procure items that they formerly were required to obtain through the GSA.

However, the use of GSA as a model for comparison to GPO's procurement operation has a number of limitations. GSA uses the Federal Acquisition Regulation (FAR) in conducting procurements. GPO utilizes its own Printing Procurement Regulation (PPR), which ensures a greater degree of flexibility, timeliness, and competitiveness in printing procurements than the FAR. GSA buys "off-the-shelf" items, some of which are relatively easy to obtain through other channels. GPO, by contrast, is involved only in the procurement of printing, which is essentially a custom product since the specifications of each job vary widely, and it must be timely to have value.

Buying printing is not like buying paper clips. A knowledge of printing requirements and processes is essential to ensuring the best possible value. GPO printing specifications are developed by knowledgeable printing experts. There are cases in which agencies have ended up paying exorbitant prices for printing they have procured themselves. For example, the news media last year reported that the Department of Labor incurred a \$30,000 printing bill for copying services that would have cost approximately one-tenth that amount if procured with the same requirements through GPO, and approximately \$500 if procured through GPO utilizing GPO-recommended cost-saving measures. Thus, comparing GSA's operation, which buys many things, with GPO's, which buys only printing, does not fully address the possible impacts of decentralizing printing procurement authority back to Federal agencies.

The decentralization of printing procurement authority is likely to significantly increase the costs of Federal printing. With such authority, agencies are likely to choose to produce much of their printing in-house, which several studies have shown *may cost twice as much* as procuring printing from the private sector. For those agencies that choose to procure printing, increased costs are also likely. It would be extremely costly for each agency to maintain the range of procurement services that GPO provides. GPO maintains a significant universe of competitors that would be difficult for each agency to maintain. Without it, competition would decrease and prices would rise. With reduced competition, there would be more opportunities for favoritism and corruption in Federal printing.

GPO offers "one-stop-shopping" to printing contractors. Without it, the contractors would be compelled to increase their sales forces to search for contracting opportunities among multiple agencies, which would increase printing costs. They would also have to deal with a

multitude of solicitation formats, a problem that is overcome by GPO's standardized procurement solicitation packages. GPO offers combined contracting services: we review requisitions and offer suggestions for economizing; develop specifications; compete, award, and administer contracts; perform press inspections and other on-site reviews to assure quality; perform quality control reviews utilizing a unique program that quantifies quality ranking factors which has become widely recognized throughout the industry; provide voucher examination and payment services; provide legal advice on contracting; and make available a dispute resolution service through GPO's Board of Contract Appeals. For every agency to provide a similar scope of services would result in increased printing costs.

In a centrally managed procurement system, GPO can ensure that Federal printing procurements are conducted in concert with pertinent statutory requirements, such as requirements for the use of recycled paper and vegetable inks. Most importantly, GPO can ensure that products are placed in the appropriate dissemination programs, such as the FDLP and our sales program. To collect information products into these programs from a decentralized system of printing and procurement throughout the agencies would be tremendously costly. For these reasons, the decentralization of printing authority to the agencies has several distinct disadvantages.

GPO's Relationship with OIRA. In my view, OIRA has not always had a strong record of commitment to comprehensive and equitable public access to taxpayer-supported information and to the cost-effective production and procurement of Government information products.

OIRA has shown little interest in dealing with the costs and public access problems posed by the proliferation of agency printing and duplicating capabilities. For example, it has not used Circular A-130 to remind agencies that they are required to obtain their printing through GPO, as established by law. OIRA has continued to actively promote the NPR proposals that would decentralize, and thereby raise the costs of, Government printing. Currently, OIRA is conducting a study of executive branch printing. GPO has not been consulted on this study nor have we been invited to participate, despite our statutory authority for all Government printing.

Where public access to Government information products is concerned, OIRA has not enforced the statutory requirement that agencies provide copies of publications produced elsewhere than GPO for distribution to depository libraries. OIRA only "encourages" agencies to provide Government information in electronic formats to the FDLP in the latest version of Circular A-130. It has not acted on our recommendations, submitted as comments on proposed changes to A-130 over the years, that the Circular refer to GPO's other information dissemination responsibilities as established by law, such as sales, reimbursable distribution, cataloging, indexing, and international exchange. They also have not acted on other recommendations we have submitted that would assist us in performing those responsibilities, such as requiring agencies to provide advance notice to the Superintendent of Documents whenever they initiate, modify, or terminate publications and information products. OIRA has not been effective in combatting agency attempts to use copyright or copyright-like controls on Government information that

impede public access, in spite of statutes on copyright and in the Paperwork Reduction Act that prohibit such activity. Last year, OIRA developed and circulated to Congress a legislative proposal for changes to the FDLP which in my view would have significantly hindered public access to Government information. GPO was not consulted on this proposal nor were we provided with a copy, despite our authority for the FDLP. At the time, OIRA was participating with us in the study on the future of the FDLP, yet they did not bring this legislative proposal to the attention of the group before it was distributed to Congress.

However, it is important to point out that I view our working relationship and interaction with the rest of OMB as excellent. We look forward every year to working with OMB staff on preparing the *U.S. Budget* and related matters, and we have an excellent relationship with OMB Director Franklin Raines as we did with Alice Rivlin and Leon Panetta when each was Director, and the same was true of OMB Directors under previous Administrations. I would point out also that we have sound working relationships with Federal agencies throughout the Government for both printing, electronic processing, and information product dissemination. We use the Interagency Council on Printing and Publications and the Federal Publishers Committee to receive input from agency representatives on our programs and operations. Overall, I would characterize our interaction with executive branch agencies as very good.

Relationship with the Libraries, Printing Industry, and Others. I would also characterize our relationships with the library community, the printing industry, and other groups as good. We meet regularly with the Depository Library Council, a body of librarians who provide input to the operation of the FDLP. Given the nature of the partnership GPO has with depository libraries in making Government information products available to the public, the advice and insight of this Council is essential.

We also stay in close touch with the printing industry through their representatives, including the Printing Industries of America, Inc. The industry's input is needed for the successful operation of our Printing Procurement Program. We recently convened a seminar for Federal agency personnel featuring representatives of printing firms who discussed the capabilities of the industry in providing for their information product needs. As with the libraries, we view our relationship with the printing industry as a partnership in which we work cooperatively to achieve the lowest possible cost for Government printing for the taxpayer.

We maintain a liaison with the information industry through its representatives, including the Information Industry Association. One of the hallmarks of Government information is that it cannot be copyrighted, and GPO is a longstanding resource for the provision of Government information products to which various businesses can add value. Until the Copyright Revision Act of 1976, our statutes were the first in the Federal Government that contained a prohibition on copyrighting Government information products, and for years we have utilized our authority to sell reproductions from the printing process as well as our discounts for volume purchasers of Government publications to respond to the needs of information companies. We are not authorized by law to restrict the resale or redissemination of Government information products.

These authorities increase the diversity of Government information made available to the public through the activities of the information industry

Finally, we maintain liaison with a wide diversity of information user groups, ranging from the scientific and technical communities, academia, legal groups, public interest groups, and others, frequently receiving input and suggestions on ways to improve public access to Government information products through our programs.

Printing and Electronic Technologies. With the growing use of electronics, there is the temptation to say that the Government no longer needs a printing capability. I think this temptation should be resisted. Last year, GPO produced approximately \$740 million in printing services (and as noted above, that is not all of the Government's printing), sold millions of documents, and distributed millions more to depository libraries. Tax forms, press releases, passports, legislative documents, informational pamphlets and books, regulations, statutes, statistical data, and more--in printed form these documents continue to represent a major avenue of communication between the Government and the public.

Ink-on-paper today is still the most egalitarian of information formats. It is accessible, transportable, and economical. The increased dissemination of Government information in electronic formats should indeed be pursued: improving our economy, sharpening our trade competitiveness, expanding our research and development capabilities, promoting educational opportunities, and a vast range of other public objectives depend on it. But at this time electronic technologies must be utilized *in addition to*, not in place of, proven systems of Government information reproduction and dissemination, and protections must be provided for those who do not have access to computers and the other technologies necessary to make electronic access meaningful. If we are not careful about maintaining policies to provide for the efficient and equitable access of *all* citizens to Government information, we run the risk of turning into a Nation of information-haves and information have-nots: a Nation of information elites, equipped with technology, and a Nation of the information-dispossessed, shut out by technology from access to critical information by and about Government that is essential to life in the United States today.

Printing remains an effective safeguard for ensuring that those without access to computers can still use Government information, and for guaranteeing both the authenticity of official Government information as well as permanence. I believe the transition to electronics must be handled responsibly with the interests of all citizens in mind. Maintaining a cost-effective printing and dissemination capability for the foreseeable future gives us an important tool to manage this transition.

CONCLUSION

Mr. Chairman, GPO today provides a comprehensive, cost-effective range of information processing, reproduction, procurement, and dissemination services. These services are designed

both to assist Congress and Federal agencies in managing the life-cycle of their information products, and to ensure that the public has comprehensive, economical, and equitable access to Government information which is increasingly valuable to American citizens and taxpayers in the Information Age. GPO's continuing migration to electronic technologies, as well as the ability of our staff, are already facilitating the re-engineering of information products and processes to satisfy the changing information requirements of the Government and the public. At the same time, our traditional capabilities are preserving and protecting access to Government information for all of our citizens. More than a century ago, Congress in its wisdom designed a system in GPO for keeping America informed. That system continues to serve a vital purpose today, and we look forward to working under congressional oversight and guidance to improve the performance of our operations and programs.

Mr. Chairman, this concludes my prepared statement, and I would be pleased to answer any questions the Subcommittee may have.

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Mr. HORN. We thank you.

Does the Superintendent of Documents wish to comment on his operations?

Mr. KELLEY. I would just add to what Mr. DiMario has said that we welcome the interest of the committee, Mr. Chairman. We feel that Federal information policy is at a crossroads, that information is disappearing rapidly from the public domain, and we appreciate the interest of this committee in that topic.

Mr. HORN. I wonder if you could elaborate on that, because you have hit a very important issue, probably the most important we will discuss. Give me some examples of how you would back up that statement.

Mr. KELLEY. Well, there are three or four ways that Government information is now disappearing from the public domain, Mr. Chairman. One is copyright or copyright-like restrictions. An example of that would be the Journal of the National Cancer Institute. For 50 years, that journal, a leading source of information to the public on cancer research, was available through depository libraries or through sale by the Government Printing Office.

On January 1 of this year, the National Cancer Institute privatized that journal. They did so under authorization that they said came from a cooperative research and development agreement. They have signed over copyright of the journal to the Oxford University Press. The American public may now only get information on American cancer research, previously supplied by this journal, by purchasing the information. This is an example of copyright restrictions.

A copyright-like restriction would be a publication, Big Emerging Markets, which is published by the Commerce Department, produced entirely by Commerce Department employees. They made an agreement—the International Trade Administration is the publisher—made an agreement with the National Technical Information Service. This agreement permitted a commercial publisher, Bernan Press of Lanham, MD, to publish this Government document, exclusively. So it was available only through NTIS' partner and NTIS itself.

There are other restrictions when Government agencies decide to sell information and they do not make it available except under their terms and conditions. This is happening more and more frequently. An example of this is NTIS and a new CD-ROM product called Order Now. For many years, this valuable resource, which had all of the bibliographical references to scientific and technical information published by the Government, was printed by the Government Printing Office.

The National Technical Information Service recently decided to make a CD-ROM of this. This CD-ROM is available only by purchase from NTIS and is not made available to the depository libraries.

There are numerous other examples, but this will give you an idea.

Mr. HORN. Before this trend occurred, when information was published by the Government Printing Office and was distributed to depositories, I assume some of that information was occasionally compiled and issued by commercial presses. They didn't have to

worry about a copyright, because that information was freely available, and depositories didn't have to worry about buying the information, because they were automatically put in those depositories by the Government Printing Office.

Now, how has that changed? Do we have actual data as to how many situations like the ones you described have occurred, and is that really restricting information, in the sense that there's a price to pay for information, most of which is done and created with the taxpayers' money?

Nothing would stop—and I don't think we would want to discourage—commercial publishers from taking Government works and putting them in book form, editing and putting subheads, whatever they want to do, putting better indexing, if they think that's possible.

But the question is, to what degree, if we don't have the Government Printing Office depositories furnished in the way they have been furnished in, you could say that is a restriction of information, and do we have any numbers on what is happening here, kept track of them all, on the privatization?

Mr. KELLEY. We have only a trend, Mr. Chairman. I can't quote you exact numbers. But in our sales program and in the depository program, we are seeing a very pronounced trend. Any information that has commercial value is now very likely to be sold exclusively and removed from our program.

The U.S. Industrial Outlook, prepared for decades by the Department of Commerce, is now going to be done on an exclusive arrangement with McGraw-Hill, using Federal employees. As I said, the cancer journal and others.

Mr. DiMario may add something to that.

Mr. DiMARIO. We have a list of several publications that have given us concern. The ones mentioned by Mr. Kelley, certainly, and then the Export Administration Regulations; CIA World Fact Book; the NOAA Diving Manual; Hispanic Latinos, Diverse People in a Multicultural Society, a booklet by the Department of Commerce; A Nation of Opportunity, Kickstart Initiative, another from the U.S. Advisory Commission on National Information Infrastructure.

We have Population of States and Counties of the United States, a Bureau of the Census publication, 1790 to 1990; Historical Statistics of the United States, Colonial Times to 1970, in CD-ROM format; Toxic Substances Act, Chemical Substance Inventory; and there are several others I can read to you that are included here.

It is these kinds of publications that bother us. Now, concerning your reference to the value-added producers in the private sector, I think the beauty of the existing Title 44 is that it has contained in it the essence of supporting the private sector's use of public information.

We are a publisher, in the first instance, of the information as it came from the Government. But the private sector, in putting value to it, enhances that, and for those people who want to go beyond the basic information given to the Government, we encourage that. It is a wider dissemination of Government information disseminated to the public, and the better the Nation is informed. So we totally support the private sector.

What we oppose is the exclusive arrangement that then starts to deny people access to the basic information except to pay a price that they may not be able to afford. The existing structure allows everyone to get free access. It does not allow them to get their own publication.

Mr. HORN. Now, how much of your material—and then I will yield to Mr. Davis—is on the Internet?

Mr. DiMARIO. We currently have 70-plus data bases that we have put up on-line on the Internet. Those include the Congressional Record and the Federal Register, which the GPO Access law required us to put up, but it also includes the U.S. Code. It includes many, many other publications.

We are putting additional publications up. We are trying to enhance that information to make as much of the demand publications available to the public as possible. Now, there is a limitation on the number of resources we can commit at any given time.

We are trying right now to do the Code of Federal Regulations with the Office of Federal Register and the Archivist of the United States, Mr. Carlin. That's a very important project to them. And the Code of Federal Regulations is probably the most in-demand publication that we make available, because this is how the public interacts with its Government, they know the rules and regulations that are out there.

All agencies have to be involved in that process, so it's a difficult process, but we are undertaking it and we are moving along quite rapidly. This is not to preclude commercial folks from purchasing from us the information, at cost, essentially, and going and putting a value-added product up that enhances what we are doing.

Mr. HORN. Mr. Davis, the gentleman from Illinois.

Mr. DAVIS OF ILLINOIS. Thank you very much, Mr. Chairman.

Mr. DiMario, good morning. How are you doing?

Mr. DiMARIO. Yes. Good morning.

Mr. DAVIS OF ILLINOIS. You address, I guess, one of the main thoughts that I had, and that is, as we continue to increase our telecommunications technology and there is a greater reliance on the use of it, can we measure the extent to which it has impacted the need for our printing office?

Mr. DiMARIO. Well, to some degree, we can measure that. The printed product is declining, to some degree, in demand with respect to traditional products that we have been putting up on-line. That is, as we put up an electronic product, there are some people who would prefer the electronic product. But there are still people who want the paper product, and there are some who want both. So we see both of those things happening.

If we examine our subscriber lists for paper products, often we see that they are getting the electronic products. What is happening, though, is, as products are being put up electronically, in some instances, they are replacing the paper product. And when that happens, they are not fully available to everyone in the public. The public has a difficult time finding these.

There is a Government information locator system that is supposed to be being developed throughout Government. We have our own GILS structure, and we reference it in the official statement

that we submitted, the prepared statement. That GILS structure allows people to identify publications that we are aware of.

We have attempted to make the structure in such a way that people can point to other agencies and obtain the information on the other agencies' lists. But not all information is coming through us, and the public has to go hunting across many, many sources to identify information, as it stands right now. We think they need one place where they can locate that information.

Mr. DAVIS OF ILLINOIS. Do you get the impression that we are seeking more information? It seems to me that I'm getting more paper, and I'm also getting more telecommunication inquiries. Are we getting more of a requirement?

Mr. DiMARIO. I really can't say, but my experience is somewhat like yours. What is happening is, a lot of paper is being outputted at the point at which you receive it electronically. As a consequence, you may be receiving more paper. I have not looked into that.

From the standpoint of what we produce, we are producing fewer paper products, but it's still a very, very significant number, as I pointed out that over \$700-million worth of paper is still coming through us. The electronic portion is still a small number. Even when I talk about putting 70 data bases up electronically and doing various things, it is still a small number relative to what we are doing in paper.

Mr. KELLEY. I might add, Mr. Davis, that it's interesting that the Library of Congress paper collections continue to increase, even in this electronic age. So it's not disappearing in print.

Mr. DAVIS OF ILLINOIS. It's an interesting point.

You mentioned that decentralization would likely increase the cost. Would you talk about that a little bit?

Mr. DiMARIO. Sure. From our perspective, when you decentralize the procurement of printing and the production of printed products, each point at which that product is generated has to put in place some mechanism that allows them to acquire that product.

Printing is very different than just going out and buying, say, pencils that are available in the marketplace. Printing is essentially created for a particular use at a particular time. So you have the administrative cost that now gets decentralized.

We have some 6,000 billing addresses in Government, as an example, people who are ordering publications from us. If you have a decentralized structure where these 6,000 billing centers now become independent structures buying their own printing, you are going to build up significant administrative costs.

You are also going to create costs for the printer, who now has to look at that market and potentially have salespeople to call on all of these various areas of Government in order to come in and get business.

Right now, we are a centralized source. We get information from the various agencies. They place orders with us. We place them against contracts that we use our own internal expertise to create. We know that every printed product has some variation to it, but we can create contracts that are sort of general usage kinds of contracts, and we can have large numbers of contractors around the country bid on these contracts.

We have some 13,000 contractors on our bidding list, around the country. As a result, we get very, very low prices. There are people all over the country who bid on the work. We have quality measurements for the quality of the work. We have a sense of what that work ought to cost.

And the issue is always the bottom line cost: Can that contractor, at any location, provide the product to the customer agency in a timely manner, at the quality level that the customer wants, at the lowest cost, including transportation costs?

If the contractor meets the requirements and comes in with the low bid under those circumstances, we don't care if they are in California and the need is in New York, as long as it's there in a timely fashion. Well, that gives us a very, very low price. But when you simply are going to your local provider, at any of these 6,000 locations, you walk down to your neighborhood quick printer, you are not assured that you are getting the very best price for your money.

We have examples of that. We have an example of one publication that could have been produced through one of our programs for one-tenth of the cost that it was produced through a local private sector provider, where an executive agency went to purchase the publication.

I think they paid \$30,000 for it; it could have been procured, with their specifications, in our office for one-tenth of that amount. And additionally, had they come in and talked to us about modifications in the specifications that still would have met their requirements, we think we could have purchased that product for around \$500, as opposed to \$30,000.

Mr. DAVIS OF ILLINOIS. One other question, if I could, Mr. Chairman?

Mr. HORN. Sure.

Mr. DAVIS OF ILLINOIS. Do you feel that, through this system, small businesses get an adequate opportunity to participate?

Mr. DiMARIO. We think so, because, No. 1, the printing community is predominantly a small business community. One of our main suppliers, by the way, is an 8(a) firm in California, and they are a marvelous supplier. They have done a great job for us, and they regularly bid on the work, and they are considered a small business. So small businesses are out there.

In fact, printing is predominantly small business. Certainly, there are firms like Donnelly, that is just very, very large, but many of these companies that, in this industry, would be considered very large, may, under the existing Small Business Act, be considered a small business.

In our structure, we actively go out and attempt to get small businesses to participate in the program, and they do. The Printing Industries of America has just got untold numbers of people who are small businesses and actively participate.

Mr. DAVIS OF ILLINOIS. Thank you very much. You've been very helpful.

Mr. DiMARIO. Yes, sir.

Mr. DAVIS OF ILLINOIS. I have no further questions.

Mr. HORN. We are delighted to welcome another member of our full committee, and that's Major Owens.

I think you are the only professional librarian in the Congress. Are there some questions you would like to ask?

Mr. OWENS. Not at this time.

Mr. HORN. Well, let me proceed down some questions. And whenever my colleagues have a question, just let me know, and we will get them all out on the record.

In your testimony, you noted that the Government Printing Office has gone from 8,200 employees, about 20 years ago, to 3,700 employees today. Have you had to lay off employees in order to accomplish those reductions?

Mr. DiMARIO. By and large, the answer is no. We have accomplished this through attrition and planned attrition. Knowing that technology was changing, we worked through a very long-term planning process and reduced the size of the office.

The only place where we have had to RIF was in the closure of some of our field operations. In fact, in the downsizing of those regional plants, there were, as against this entire number, eight individuals that were actually RIFed. There were 32 people who were affected by the downsizing, but we were able to help place the other employees effectively with other agencies.

Mr. HORN. What technological change had the most to do with the reductions?

Mr. DiMARIO. I would say the move from hot metal to the existing structure that we have. When we went from hot metal composition, just the nature of the process allowed us to reduce very, very substantially. As noted in the testimony, we've been into electronic photocomposition since really the mid-1970's. I think we started in the late 1960's. But in the mid-1970's, that transition allowed us to just change the numbers of people that were necessary to produce products.

Mr. HORN. You mentioned, and you expanded a little on that, that about 75 percent of your printing is outsourced to private contractors. How do you decide what work should be performed in-house and what work should be performed by private contractors?

Mr. DiMARIO. The work that is performed in-house, to a large degree, is work that requires very quick turnaround, security issues, maybe sensitive material, or requires a very quick, close relationship with the customer agency.

Let's take congressional printing. We do the Record and Register and the bills internally. We have to work with each committee of Congress. We have to work with the leadership in order to get those products done and turned around so they can be on your desks early in the morning.

With respect to other congressional products, we are certainly looking at the degree to which we can contract out some of that material, but by and large, it is dependent on the needs of Congress. We will have staffing in the office to meet these peaks and valleys in congressional demand, and so we have to retain some products to meet those peaks and valleys.

We look at executive branch publications from the standpoint of how well they fit on equipment that we have and is necessary. For example, the Record presses that we have to produce the Congressional Record we also use for the Federal Register. They are identical products in many ways. They use newsprint. But they all need

this timely daily delivery, and so we have a work force that's able to handle those. So that's one of the ways we make that decision.

We also retain in-house the U.S. budget at the request of the White House. There's a great deal of security involved in that, and we work very, very closely with the Director of OMB and their staff on the production of that. We do passports in-house. We do postal cards in-house. And other products, as our capacity allows, we will negotiate with the agencies to keep products in-house.

But it's largely timeliness of delivery, security of the product, the sensitivity of the product, things that we need to embargo. As an example, the budget itself, we have it in; we work with OMB. And we embargo it before it's released, and they tell us when to release it.

Mr. HORN. And that's a very detailed job. I don't think there has ever been a leak, has there?

Mr. DiMARIO. I hope not.

Mr. HORN. I'm not aware of any.

Mr. DiMARIO. I'm not aware of any.

Mr. HORN. Has this percentage of work—essentially three-to-one, if you will—has that been changing in recent years, and in which direction is it changing?

Mr. DiMARIO. Yes, sir. It changes on a yearly basis, to some degree, but it's a fairly constant number, although it has been going up, as a percentage. When I came to GPO, in 1971, I would say the percentage was roughly 62 percent, 63 percent of the total work. We are now at 75 percent to 80 percent. I think that shows the variation.

But it's an effort on our part to put as much into the private sector as we can, with the need to retain an in-house work force. What we have done during my term, we have closed a number of field facilities. So the only remaining field printing facility that we have, and it's quite small, is our Denver field printing plant.

Other than that, we procure printing, and we have field procurement operations. Even in this town, we had a facility at the Navy Yard that is closed; it has been merged into our central office plant. And the central office plant has been reduced dramatically.

Mr. HORN. Later today, we're going to have a witness from the Printing Industries of America, and the recommendation from them is that the Government Printing Office should contract out far more of its printing to private sources. Do you have any comments on that?

Mr. DiMARIO. Well, I think they look at the dollar value of the printing that is in the plant. And they, obviously, would like it all contracted out. I think that's a given. If you're out there, you see it as a source of revenue in your industry.

My sense is that we have worked very diligently to put a maximum amount of work into the private sector, but we still have to take into account the needs of Government. We need a central facility to produce some products in a timely fashion, in order to support your work and the work of your staffs.

Let's look at the budget process. We work very, very closely with the budget committees during the appropriations process. Frequently, those staffs are dependent on going back and forth with our office on all of those appropriations bills. We have to move

those through in that appropriations cycle, every bill that comes through, working with those various staffs, and that is critical to how Congress operates.

We work with the Office of Legislative Counsel, the Senate Office of Legislative Counsel and the House Office of Legislative Counsel, in the bill drafting process. That's all part of our in-house production.

So it's not just the output that we're talking about, it's not just the printed product at the end, it's the totality of how information is created and used. That interface is a constant. I don't know how you separate the two out effectively.

Mr. HORN. Let me ask you about the Congressional Record. Now, a lot of the depository libraries have not had the permanent bound volumes of the Congressional Record for a number of years. What is the situation on that?

Mr. DiMARIO. Well, that's one that I think it's partly our fault. We have to move the bound Record out. And we do the bound Record when we have work space available for our people to work on it. But the bound Record is also dependent on getting the final data from the Congress. And when the Record is produced on a daily basis, it's subject to some modification. The Congress, as you know, may provide some changes to us at a subsequent time, so that is difficult to get out.

Moreover, we have, in the appropriations process, a situation where there has been an effort to limit the distribution of the bound Record in the paper format, and a movement toward trying to get us to do it as a CD-ROM product. That has not been well received in the library community. The view of researchers is that the permanent bound Record is a very, very important document, and they would like to see the paper volume continue.

So what we've done is, we've had a committee that deals with the bound Record, and we deal also with the serial set—I'm certain you are familiar with the serial set, which is all the congressional numbered documents—whether or not those two publications should be continued in some way as paper products.

But the timeliness of delivery, which is part of your issue, is tied into that whole structure.

Mr. HORN. I think, basically, we need both. I mean, if the CD-ROM permits indexing and searching by word or key phrase, that's very helpful. Because one of the frustrations with the current microfiche, I believe, that as it goes out to the depositories, it's just about impossible to do research and find the material you want in a timely way.

As we all know, there's a difference between the pagination of the daily Record versus the bound permanent Record. Unless we can solve that problem, we have a real difficulty to track sources and footnotes in scholarly works on Congress, at least that quote the Congressional Record.

So I guess I'm saying, what's slowing you up, and what's stopping you from making up those permanent records that are bound and can be in libraries, that will hopefully be there for a few hundred years, at the least? I realize there are other ways of technology, and all that, but, on some of it, you just need to look at

what was said, and you need to get the right page numbers when you are doing research.

Mr. DiMARIO. Well, correct, and I support that view. We need to do a permanent bound Record that is truly available to the research community. I think the issue needs to be addressed in the Appropriations Committee, though. That issue has been raised on a regular basis for as long as I can recall, in that committee, and it needs to be worked out between the various committees of jurisdiction.

Mr. HORN. Well, are they shorting you on money for that?

Mr. DiMARIO. Well, they would like us to migrate away from the paper products. And one of the reasons we moved to the microfiche, initially, was to save money. So the question, are they shorting us on money, I think that yes, they are. But it is more by way of policy. They do not want us to produce these paper products. They do not see the value of them as readily as some others see them.

Congress is not deriving a direct benefit, necessarily, from the number of paper products that are produced, the bound records that are produced. But the depository community, the research libraries are the ones who derive the benefit, and the entire Nation does. They are, through the availability in research libraries, serving the entire Nation, commercial users as well as research institutions.

Mr. HORN. Well, is the Appropriations Committee telling you not to print the Presidential papers in hard copy, with hard covers?

Mr. DiMARIO. Well, they have not made that an issue, because we're talking about the legislative branch appropriation, and they are concerned about the size of the legislative branch appropriation. I cannot speak to appropriations with respect to the executive branch, but we've not heard that as an issue.

Mr. HORN. Well, we pay the bills in either case, and I'm rather shocked my colleagues don't see equality in how we maintain congressional legislative branch records and permit the executive branch printing to go on as it is. I think both should be treated the same way. Your Presidential papers series is invaluable for scholars, as they use those records. And I would just think we should be updating the binding on the permanent Congressional Record.

It is very frustrating, as a professor, which was my life before I was elected to Congress, to have your class try to track down information on Congress. As I say, the microfiche thing is nonsense. The index is horrible. And it's just about impossible to do work in a reasonably rapid way. And I would think we need that permanent Record out.

Mr. DiMARIO. Yes, sir.

Mr. HORN. And I will talk to my friends in the Legislative Appropriations Subcommittee, because that's just being—that's one of those silly economies that don't get us anywhere, frankly, and they are on the wrong track.

Major, do you have a few questions you would like to ask? I've got a long list here to get in the record, but help yourself.

Mr. OWENS. The depository libraries, you distribute information to some in electronic formats. What percentage of the information distributed—well, do we have all the information that is in electronic format distributed to depository libraries also in print?

Mr. DiMARIO. Mr. Kelley may respond to that. Generally speaking, if the product is in print, it, up to this point, has been distributed in print. But under the direction of the Appropriations Committee, we established a task force, a couple of years ago, to look at transitioning the entire depository library system to a fully electronic system. And that task force had a great deal of participation. Mr. Kelley chaired it for us.

It involved a number of committees, including Representatives from this committee, who participated on that, and the library community. The result was, the recommendations were to slow the transition down somewhat from what the Appropriations Committee wanted, and to look at certain documents as core documents that must be maintained in paper, and that are fundamental to our democracy, our Government.

Mr. Kelley may want to add to that comment.

Mr. KELLEY. Mr. Owens, the number of tangible products, that is, CD-ROMs and discs, and so forth, is still a small percentage, perhaps 5 percent of the holdings in depository libraries.

The on-line versions through GPO Access include, as Mr. DiMARIO said earlier, some 70 data bases. The Federal Register, the Congressional Record, Commerce Business Daily are the big ones, and we're now getting—in April, we had 4.5 million downloads, in that month, of those documents. So it's getting to be a large number of accesses by the public and depository libraries, on-line.

The Appropriations Committee has urged us to make a transition to electronic documents. We have begun that transition, and by the end of 1998 fiscal year, we may have available as much as 50 percent of all the depository holdings on-line or electronically.

Mr. OWENS. My question is, what percentage of significant documents do you have which are only in electronic format now and not available in print?

Mr. KELLEY. Very few, but the pressure, as I say, is to transition and then drop the print.

Mr. OWENS. The pressure is to transition.

Mr. KELLEY. To electronic.

Mr. OWENS. But, at this point, only a few are not available in print as well as electronic format?

Mr. KELLEY. Only a few. We have been urged to do the bound Congressional Record in CD-ROMs and to limit the number of libraries who will get the bound Record. We have been urged to do the same with the bound serial set.

Mr. OWENS. So, at this point, you would say that the depository libraries are not experiencing any hardships with respect to the distribution of Government documents, situations where they don't have the capacity to utilize the electronic formats, but they don't get them in any other form, so they end up without having the information in any form.

Mr. KELLEY. The impact, at the moment, is minimal. But we are looking for it to increase. For instance, with Census 2000, the Census Bureau is telling us that they will not make available any paper and that you will have to get census reports electronically. And under consideration right now is a process under which they will only sell them electronically. We are working with the Census

Bureau to try to get some exemption that would allow electronic access by depositories.

But we can see, in the next 2 or 3 years, there will be a significant impact.

Mr. OWENS. I assume that only Congress can redirect the Census Bureau to drop that. They have declared they will not produce it in any other format? At this point, it's going to happen unless Congress were to turn that around?

Mr. KELLEY. That's correct, sir.

Mr. OWENS. What about fugitive documents, very significant documents that are produced by agencies that don't come through the Government Printing Office. Would you have an estimate of how many of those are presently only in electronic format?

Mr. KELLEY. There are just now beginning to be a number of very significant ones. The Order Now CD-ROM from NTIS is an example. NTIS has taken the position that electronic documents don't need to be included in the depository program. If that's the case, and the administration generally takes that view, then we will really have a problem as we move into the electronic future.

There are some other data bases. The Export Administration Regulations are now on an on-line data base updated daily. We still have the print product, but only because NTIS, under pressure, agreed to keep the print product in. But the more useful on-line Export Administration Regulations is not available, only for sale.

Mr. OWENS. Mr. DiMario.

Mr. DiMARIO. Well, I think the significant thing that Mr. Kelley mentioned is this trend within Government agencies, and NTIS being an example of it, where they are looking at a publication that was previously a print publication and saying, well, this is an electronic product now, and therefore it's not covered by any of these rules.

We don't read the provisions of the depository law in that way. It includes Government publications. Government publications are defined as informational matter created as individual documents at Government expense. It's a very broad definition.

Mr. OWENS. You are saying they are still required to handle an electronic information product in the same way they would handle a publication in print?

Mr. DiMARIO. We believe so. We believe that the broad structure of the depository law requires that electronic products that are created in Government agencies, that are intended as individual documents, are still required to be distributed through the Superintendent of Documents to the depository libraries.

Now, a number of agencies are just not adhering to that law. To some degree, they look to the Paperwork Reduction Act definition of publications that has been put in there, which is less broad.

OMB, to a large degree, the Office of Information and Regulatory Affairs, OIRA, has interpreted the definition that they have in the Paperwork Reduction Act to say that it needs to be a publication that was produced, in the first instance, intended for distribution to the public. Well, most documents are not produced, in the first instance, with the intention of distribution to the public. They are produced for some need of an agency.

So that interpretation of conflicting laws—I don't even believe that they are conflicting—but if you take their definition, you have to look to see whether or not the publication was produced for distribution to the public. As a general rule, it allows agencies to say, "Well, this has not been produced that way. Moreover, it's an electronic product. We don't read that as being under the Chapter 19 provisions of Title 44, and therefore, we're not going to include it in the program."

And they do not give us the publication. So more fugitive documents, in fact, are being created each day.

Mr. OWENS. Would you say we need legislation to clarify Government policy on two major issues, and that is, this definition issue, as you have just outlined, exactly what is appropriate under this law to be included in the system; and also we need some legislation to deal with the capacity of the depository libraries to utilize information in electronic format?

If they don't have the capacity, then the law is really not being carried out. We need to do something to make certain that depository libraries have the capacity to utilize the information.

Mr. DiMARIO. I would certainly think that statutory modifications that would clarify everything would be useful. Whether it's necessary or not, I don't know. I think you can read the laws in a compatible way. I think what is happening is that there are people who are charged with administering the laws who are not reading them in a compatible way.

Mr. OWENS. But fugitive documents are increasing. The number is escalating rapidly.

Mr. DiMARIO. They are increasing.

Mr. OWENS. So, obviously, you need something.

Mr. DiMARIO. Some affirmative action by Congress or within the administration, recognizing the Title 44 provisions in Chapter 19, and the definition of that law as being critical to the information dissemination to the public, certainly needs to be made.

To take the Paperwork Reduction Act definition, which was intended for a totally different purpose, and to say this allows us not to put publications out through the depository program, I think is a distortion of intention.

Mr. OWENS. Thank you.

Mr. HORN. I think the gentleman is absolutely correct. I think the gentleman from New York is correct. I can assure you we are going to review this and try to get the administration to follow the intent of both laws, which, to me, is quite clear.

We do not want to deny information to the American public. What we want them to do in their paperwork reduction is the kind of bureaucratic nonsense that comes out of every agency sometime during the year, and reduce that, which is a burden in the regulatory sense, but not in the information sense. And that's just common sense.

I am going to declare a recess for 15 minutes. We have a vote on the floor we have to respond to. So, gentlemen, relax for 15 minutes.

[Recess.]

Mr. HORN. Let us continue with the questioning.

Has the GPO ever approached the Office of Management and Budget's Office of Regulatory and Information Affairs about negotiating a Memorandum of Understanding to cover the executive branch's printing and information relationship with the Government Printing Office?

Mr. DiMARIO. We have participated in an attempt at negotiating that. It was not our directly approaching OMB or OIRA. It was done, actually, through the House of Congress a couple of years ago, or a committee of the House of Congress, and that committee of the House was, I think, Post Office, Treasury, and General Government Subcommittee of the Appropriations Committee.

They brought us together, and we talked about having some policy that would be put in place until the differences could be worked out legislatively between the executive branch and the committee.

The result of that was the so-called "Rivlin memoranda" that we have made some mention of. Alice Rivlin first, and then Mr. Panetta, issued memoranda that asked the agencies of Government to continue to do work through GPO.

And there were certain exceptions that were spelled out in the memoranda where agencies could continue to do a certain amount of their work in existing plants, but could not expand capacity, had to continue their downsizing efforts for their internal operations, and at the same time give preference to procured products, and that the procurement be through the Government Printing Office.

So that policy statement was issued in conjunction with this committee negotiation with OMB. And I personally participated in that and also in the drafting of the memoranda. The memoranda were issued by Ms. Rivlin, then Mr. Panetta, and then the Acting Director, Jacob Lew, at OMB.

Mr. Raines has been asked, not directly by GPO, but I believe by the Joint Committee on Printing members, a number of whom or all of whom have signed a letter to Mr. Raines asking that he reissue the policy of this negotiated agreement until some legislative solution can be worked out.

What has happened is, that memorandum that came out had a 1-year timeframe to it. It was first issued in September 1994, then in April 1996, but there was this sense in OMB that, in April 1997, the memorandum expired, because it made reference to a 1-year timeframe.

And in advance of that 1-year timeframe, we saw evidence in OMB that they were looking, together with a couple of agencies, to migrate away from GPO and to set up their own centralized printing activity. In fact, they issued a publication to a number of Government agencies and held a meeting that discussed a restructuring of government printing in the executive branch, and that would have been to essentially ignore the current law and to push GPO outside that.

Mr. HORN. Is there anything in that memorandum that Rivlin, Panetta, and the Acting Director signed off on, to which you, as Public Printer, object?

Mr. DiMARIO. No, sir. I have no objection.

Mr. HORN. So you have no problem with that memorandum being continued as a guidance to the executive branch?

Mr. DiMARIO. I would support it completely. And I think that we, at that point, both in the executive and in the legislative branch, could work toward a common solution that was agreeable to everyone.

Mr. HORN. Are you aware of any rival printing operation that is now being established in the executive branch, and if so, where is it, and does Congress know about it?

Mr. DiMARIO. Well, we have some evidence regarding the Defense Department, the Defense Automated Printing Service, specifically.

Mr. HORN. Well, they have been excluding themselves for years, haven't they?

Mr. DiMARIO. Yes, sir.

Mr. HORN. This is not new.

Mr. DiMARIO. No. But they have been acting with the General Services Administration printing operations and have been looking at merging the two activities. And the Defense Automated Printing Service has actually been reaching out for customers outside of the Defense Department, in an expansive role, to provide printing services and contracting services for them.

We also see the same thing happening in NTIS, the National Technical Information Service, in Commerce, where they are reaching out for customers. They assert that they have their own independent authority to act and that they are not bound by the printing laws.

So, yes, sir, we do see this.

Mr. HORN. Has your counsel looked at that document, and what is the reaction of the Public Printer to that document?

Mr. DiMARIO. Well, we believe that they do not have this independent authority, and we believe that they are simply looking at ways of avoiding the generic law that is in Title 44. And we saw exactly that in some activity by GSA, where they asserted they had independent authority. They looked at some obscure provision of law.

The Justice Department came back and said that the authority that they were relying on was not sufficient, not adequate, I believe. Our counsel, in looking at these, has clearly said they are not consistent with the Title 44 provisions.

Mr. HORN. OK. At this point, I want in the record an exhibit of the memorandum signed off by two budget Directors and one Acting Director, and the relevant citation that you have from Defense, and any other exhibits.

Do we know what their costs are? Do we know what their overhead is? We will ask our staff to ask the two agencies you named for how many printing jobs have they handled outside of their own. What are their charges? How much overhead are they levying, et cetera?

Mr. DiMARIO. We will submit all of those to you.

Mr. HORN. Very good. Without objection, they will be put in the record at this point.

[The information referred to follows:]



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 19, 1994

M-94-30

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Alice M. Rivlin *AMR*
Acting Director

SUBJECT: Procurement of Printing and Duplicating through
the Government Printing Office

Background

Information technology is changing the way words and images are put on paper, blurring traditional notions of printing and duplicating. As a result, the framework of laws governing these aspects of government publishing has become outdated.

In his July 22, 1994, statement accompanying the Fiscal Year 1995 Legislative Appropriations Act, the President expressed his eagerness and resolve to accomplish a comprehensive reform of Federal printing. The leadership of the Congressional committees of jurisdiction has agreed to work with the Administration to produce a legislative approach to solving this problem next year. Accordingly, we have agreed to maintain the status quo regarding present printing and duplicating arrangements during Fiscal Year 1995 to allow this initiative to go forward.

We have agreed that legislative reform of government printing must strive to achieve three goals. First, it should improve the efficiency and cost effectiveness of government printing and duplicating by maximizing the use of private sector printing and duplicating capability through open competitive procedures. Second, it should limit Government-owned printing and duplicating resources to only those necessary to maintain a minimum core capacity. Finally, it should enhance public access to government information by improving the information dissemination practices of the Federal government. I am certain you share these goals. We look forward to consulting with you as this legislative program is formulated.

Policy

Accordingly, as a matter of Administration policy, Executive departments and agencies are to carry out their

printing and duplicating activities during Fiscal Year 1995 in accordance with the following:

- o The procurement of printing and duplicating services from private sector sources shall continue to be the preferred method of fulfilling agency printing and duplicating requirements.
- o All procurement of printing and duplicating from private sector sources shall be through the Government Printing Office, except for individual printing or duplicating orders costing not more than \$1,000, if such orders are not of a continuing or repetitive nature and cannot be provided more economically through the Government Printing Office.
- o Existing agency in-house printing and duplicating operations and agency cross-servicing arrangements (e.g., GSA's provision of duplicating services to other agencies in field locations) may continue to operate normally.
- o Agency printing and high speed duplicating capacity shall not be expanded. This is not intended to affect the ordinary maintenance and replacement of existing equipment capacity.
- o Existing agency plans to downsize internal printing and duplicating capacity shall continue to be carried out.
- o Agencies should ensure that all government publications, as defined in 44 U.S.C. Part 19, are made available to the depository library program through the Superintendent of Documents.

I must emphasize that agency compliance with these policies, and cooperation with Congressional oversight, is essential to the ultimate success of a comprehensive legislative initiative to reform government printing.

THE WHITE HOUSE
WASHINGTON

April 11, 1996

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Leon E. Panetta 
The Chief of Staff

SUBJECT: Procurement of Printing and Duplicating through the Government
Printing Office

The President has asked me to remind you to make maximum use of the capabilities and expertise of the Government Printing Office in handling your agency's printing and duplicating procurements during the next 12 months, in accordance with the following :

- Agencies should continue to procure printing and high volume duplicating through the Government Printing Office.
- Existing agency in-house printing and duplicating operations and cross-servicing arrangements may continue to operate normally.
- Plans to downsize internal printing and duplicating capacity shall continue to be carried out.

At the end of this period, the Office of Management and Budget will assess the cost-effectiveness of current printing and duplicating arrangements and make recommendations for improvement.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 12, 1996

M-96-37

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

FROM: Jacob J. Lew
Acting Director 

SUBJECT: Procurement of Printing through the Government Printing Office

The attached memoranda of September 19, 1994, and April 11, 1996, set forth Administration policy with respect to the use of the Government Printing Office (GPO) in handling agency printing and duplicating needs. Subsequent to the April 11 memorandum, the Department of Justice's Office of Legal Counsel (OLC) issued an opinion that confirmed the long recognized Constitutional issues with respect to a legislative agency such as GPO prescribing policies and procedures for the Executive Branch. This memorandum clarifies Executive Branch printing and duplicating policy in light of that opinion.

OLC's opinion sets forth the proposition that Congress may not require Executive Branch agencies to use an entity controlled by the Legislative branch. At the same time, it does not bar the Executive Branch from choosing to use GPO. We have committed to working with Congress to achieve a comprehensive reform of Title 44, consistent with Constitutional principles. In the meantime, as a matter of policy, agencies are to continue to use the capabilities and expertise of GPO in accordance with the attached memoranda.

Attachments



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

September 19, 1994

M-94-30

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At the end of this period, the Office of Management and Budget will assess the cost-effectiveness of current printing and duplicating arrangements and make recommendations for improvement.



General Services Administration
Office of Management Services and Human Resources
Washington, DC 20405

FEB 18 1997

Assuring our customers the high quality and timely reproduction support services they will need in the future requires long term thinking and long term commitment. With your needs in mind, GSA and the Defense Automated Printing Service have started exploring the possibilities of merging our respective printing and duplicating operations.

At the conceptual level, we believe such a merger will be transparent to our customers while providing a broader and stronger support base to meet their evolving needs. This means that you will still be working with the same people you work with today. They will just be backed up by a much larger organization that is committed to your long range needs.

As you can appreciate, many details must be addressed before any merger can be accomplished. We just wanted you to know that, as these discussions proceed, your best interests are a critical part of those details. If you have any questions or would like to discuss this further, please let me know.

Sincerely,

Donald T. Jochie
for Johnny T. Young
Director
Reproduction Services Division



U. S. Department of Justice

Office of Legal Counsel

RECEIVED

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Office of the
Assistant Attorney General

Washington, D.C. 20530

OFFICE OF GENERAL COUNSEL

September 13, 1993

MEMORANDUM FOR EMILY C. HEWITT
General Counsel
General Services Administration

Re: General Services Administration Printing Operations.

This memorandum responds to your request for our opinion on certain restrictions that the Joint Committee on Printing ("JCP") has attempted to place on the printing operations of the General Services Administration ("GSA"). In particular, you have asked us whether the JCP has the authority to restrict GSA's printing functions, and whether recent legislation has any effect on GSA's authority to engage in printing. We conclude that the JCP does not have the authority to alter GSA's printing operations, but that section 207 of Public Law 102-392 (codified as a note to 44 U.S.C. § 501) mandates procurement of printing for executive branch agencies by or through the Government Printing Office ("GPO").

I

44 U.S.C. § 501 provides that all executive, congressional, and judicial printing must be done at the GPO, except for printing in field plants operated by executive departments or independent offices "if approved by the Joint Committee on Printing." This Office issued an opinion in 1984 determining that the requirement of approval by the JCP constitutes an unconstitutional legislative veto, because it purports to empower a single committee of Congress to take legislative action without meeting the Constitution's requirements of bicameral passage and presentment to the President. Memorandum for William H. Taft, IV, Deputy Secretary of Defense, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, March 2, 1984; see *INS v. Chadha*, 462 U.S. 919 (1983) (holding legislative veto unconstitutional for failure to comply with constitutional requirements of bicameralism and presentment). The opinion concluded that the provision allowing field printing is severable from the invalid approval mechanism and that the remainder of the statute, permitting field printing, remains effective.

44 U.S.C. § 501 is the only statute that purports to give the JCP direct authority over government field printing operations. Congress has not amended 44 U.S.C. § 501, nor has it passed any other legislation granting the JCP new authority over printing. Thus, the JCP lacks the authority to alter executive agencies' printing operations; its only asserted authority to do so is contained in an invalid approval mechanism.

The JCP has, on a number of occasions, asserted its authority to alter GSA's printing operations. In particular, it has stated that it "modified the charters of all GSA printing plants" by means of a letter sent to GSA on March 16, 1989. See Letter from the Honorable Charlie Rose, Chairman, and Senator Wendell H. Ford, Vice Chairman, Joint Committee on Printing, to Richard G. Austin, Administrator, General Services Administration at 1 (January 15, 1993). The March 16, 1989 letter apparently relied on the JCP's purported authority under 44 U.S.C. § 501 in stating, "please advise your [GSA's] field printing and duplicating organizations to restrict their activities to providing services to Federal agencies within their immediate building complexes." Letter from Senator Wendell H. Ford, Acting Chairman, Joint Committee on Printing, to Richard G. Austin, Acting Administrator, General Services Administration (March 16, 1989). Because the JCP lacks the authority to restrict GSA's printing operations, its attempt in 1989 to alter GSA's field printing operations, as well as all other attempts by the JCP to modify unilaterally the printing operations of executive agencies, are invalid.

II

Although Congress has not passed legislation granting the JCP direct authority over executive agencies' printing operations, it has passed legislation that requires executive branch agencies to procure printing through the GPO. Paragraph (a)(1) of section 207 of Public Law 102-392 ("section 207") provides as follows:

None of the funds appropriated for any fiscal year may be obligated or expended by any entity of the executive branch for the procurement of any printing related to the production of Government publications (including printed forms), unless such procurement is by or through the Government Printing Office.

The scope of section 207(a)(1) is quite broad: it applies to any appropriated funds expended by any executive branch entity, which would encompass virtually all spending by all executive branch

agencies.¹ Cf. 5 U.S.C. app. 2 § 8E (Inspector General Act of 1978) (defining the term "Federal entity"). Thus, section 207(a)(1) mandates that all executive agencies procure all of their printing related to the production of government publications by or through the GPO.²

There are, however, three limitations on this provision. Section 207(a)(2) exempts from the strictures outlined above

(A) individual printing orders costing not more than \$1,000, if the work is not of a continuing or repetitive nature, and, as certified by the Public Printer, cannot be provided more economically through the Government Printing Office, (B) printing for the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, [and] (C) printing from other sources that is specifically authorized by law.

The first two exemptions place clear, but narrow, limits on the scope of section 207. Only the third exemption could potentially exempt GSA entirely from the restrictions of section 207(a)(1). The sole remaining question, then, is whether GSA may be exempted pursuant to section 207(a)(2)(C), which exempts "printing from other sources that is specifically authorized by law."

III

You have identified two possible statutory bases for the proposition that GSA's printing operations are specifically authorized by law. The first is 40 U.S.C. § 481(a)(3), which

¹ Previous versions of the note to 44 U.S.C. § 501 (where section 207 is codified) contain similar restrictions on printing procured by entities of the executive branch. See, e.g., 44 U.S.C. § 501 note (Supp. II 1990) (104 Stat. 2274). These prior versions had a significantly narrower scope, however, as they applied only to the procurement of printing "from commercial sources." See *id.*

* ² Section 207 does not violate the separation of powers by delegating executive authority to the GPO. See 9 Op. O.L.C. 55 (1985) (concluding that the GPO is a unit of the legislative branch for purposes of post-employment restrictions). It does not give the GPO the authority to refuse to print any materials, but rather merely requires that printing be procured "by or through" the GPO. Moreover, because 44 U.S.C. § 1101 provides that "[t]he Public Printer shall execute such printing and binding for the President as he may order and make requisition for," the executive branch retains its ability to ensure that materials are printed.

authorizes the Administrator of GSA to "procure and supply personal property and nonpersonal services for the use of executive agencies in the proper discharge of their responsibilities." The second is 40 U.S.C. § 293, which provides in relevant part that, "[f]or the establishment of a working capital fund there is appropriated \$50,000, without fiscal year limitation, for the payment of salaries and other expenses necessary to the operation of a central blueprinting, photostating, and duplicating service."

40 U.S.C. § 481(a)(3) does not constitute specific authorization to print. The provision does not mention printing or any printing-related services. This omission is particularly striking in light of the reference in a companion provision, section 481(a)(1), to other aspects of "procurement and supply of personal property and nonpersonal services," such as "contracting, inspection, [and] storage." The specific reference in section 481 to such functions can be contrasted with the omission of any reference to printing. Moreover, there are no references to printing in the legislative history of 40 U.S.C. § 481. Thus printing is authorized by this provision only as one of the many services that GSA provides. Such broad authorization to engage in certain categories of services is, by definition, general. There is no basis for suggesting, therefore, that this provision satisfies the requirement that the printing be "specifically authorized by law."

Section 293 is a somewhat closer case, because it does mention "blueprinting, photostating, and duplicating," which could be construed to include most, and perhaps all, of GSA's printing operations. The problem with this section is that, although it specifically mentions these printing operations, it does not specifically authorize them.

Section 293 was originally enacted as a section of an appropriations act that was passed in 1945, Pub. L. No. 49, § 101, 59 Stat. 106, 115, and has not been substantively amended since then. This section of the appropriations act authorized the creation and maintenance of a fund to pay salaries and other expenses; that is, it merely appropriated funds. The operative effect of the current version, similarly, is to authorize the use of certain money to fund ongoing operations. The structure of section 293 is that it appropriates \$50,000 for the payment of salaries and expenses necessary to the operation of printing services. The phrase "necessary to the operation of a central blueprinting, photostating, and duplicating service" indicates that the printing service -- and any authorization for it -- exists irrespective of the appropriation in section 293. The reference to printing merely clarifies the purposes for which the funds shall be used. Thus, section 293 clearly contemplates that

GSA³ will operate "a central blueprinting, photostating, and duplicating service," but it does not, by its terms, authorize such a service. The language of the section reveals that its operative effect is to authorize the use of funds to pay for certain functions, not to authorize those functions per se.

Arguably, the establishment of a fund to pay for printing also constitutes an implied authorization to print. Such implicit authorization, however, does not appear to meet the requirement that the printing be "specifically authorized by law." "Specifically" is defined as "with exactness and precision; in a definite manner," Webster's New International Dictionary 2415 (unabridged 2d ed. 1957), and "specific" means "explicitly set forth; definite." American Heritage Dictionary 1730 (3d ed. 1992). In this case, the authorization to print is not explicitly set forth or presented in a definite manner. At most, it is indirectly entailed in the explicit authorization to appropriate funds. The absence of an express authorization to print defeats any argument that GSA's printing operations were "specifically authorized by law." Thus, in 40 U.S.C. § 293 there is a specific reference to printing, and there may be an implied authorization to print, but there is no specific authorization to print.

The legislative history of 40 U.S.C. § 293 does not affect this analysis of its language, because such history reveals nothing with respect to Congress's intent (or lack thereof) specifically to authorize printing. We are left, then, with the words of the statute. The most natural reading of them is that they specifically authorize the creation of a fund to pay certain expenses, and that they may contain an implied authorization of the printing that helps to create those expenses, but that they do not specifically authorize printing, because the implication of authorization does not rise to the level of specificity that section 207 requires.

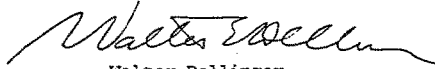
IV

We conclude that the JCP lacks the authority to alter GSA's printing operations, because the only basis for that authority is an invalid legislative veto contained in 44 U.S.C. § 501. We also conclude that section 207 requires executive branch entities (other than the Central Intelligence Agency, the Defense Intelligence Agency, and the National Security Agency) to procure

³ The original version of 40 U.S.C. § 293 appropriated funds for blueprinting, photostating and duplicating by the Federal Works Agency. Section 103 of the Federal Property and Administrative Services Act of 1949, Pub. L. No. 152, 63 Stat. 377, 380, transferred all functions of the Federal Works Agency to GSA.

printing related to the publication of government publications by or through the GPO. GSA is exempted from this requirement only with respect to certain individual printing orders costing \$1,000 or less.

Please let us know if we may be of further assistance.

A handwritten signature in cursive script, appearing to read "Walter Dellinger", written in dark ink.

Walter Dellinger
Acting Assistant Attorney General
Office of Legal Counsel



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D. C. 20530

March 11, 1994

MEMORANDUM FOR EMILY C. HEWITT
GENERAL COUNSEL
GENERAL SERVICES ADMINISTRATION

From: Walter Dellinger *W.D.*
Assistant Attorney General

Re: Reconsideration of September 13, 1993 Opinion

You have asked us to reconsider our conclusion, in our opinion of September 13, 1993, that section 207 of Public Law 102-392 (codified as a note to 44 U.S.C. § 501) ("section 207") applies to printing by the General Services Administration ("GSA"). We have carefully reconsidered our opinion in light of the materials that you presented, and we now conclude that the opinion correctly determined that GSA's printing operations are not "specifically authorized" within the meaning of section 207.

As we noted in our previous opinion, section 207(a)(1) mandates that all executive agencies procure all of their printing related to the production of government publications by or through the Government Printing Office. Section 207(a)(2) contains three exemptions to this requirement, only one of which could potentially exempt GSA entirely from the restrictions of section 207(a)(1): the provision excluding from the strictures of section 207(a)(1) "printing from other sources that is specifically authorized by law." Section 207(a)(2)(C). In your request for reconsideration, you have suggested that GSA's printing is "specifically authorized by law," by virtue of 40 U.S.C. § 293 (1988) ("section 293"). On this basis, you have asked us to reconsider our conclusion that section 207(a)(1) applies to GSA's printing.

Section 293 was originally enacted as a section of an appropriations act that was passed in 1945, Pub. L. No. 49, § 101, 59 Stat. 106, 115, and has not been substantively amended since then. It provides in relevant part that, "[f]or the establishment of a working capital fund there is appropriated \$50,000, without fiscal year limitation, for the payment of salaries and other expenses necessary to the operation of a central blue-printing, photostating, and duplicating service." Thus, this section of the appropriations act authorized the creation and maintenance of a fund to pay salaries and other expenses for the operation of a printing

service. It did not, by its terms, authorize printing services; its operative effect is merely to authorize the use of certain money to fund printing operations.

You have suggested that the legislative history of the 1945 appropriations act indicates that Congress intended specifically to authorize printing. The House Report accompanying the appropriations act creating the Working Capital Fund stated that

Approval also is given to the proposal that \$50,000 be provided for the establishment of a working capital fund to finance a central blueprinting, photostating, and duplicating service now operated by the Public Buildings Administration and being financed from construction funds. The appropriation has been requested to meet the recommendation of the General Accounting Office that specific authority for the project be secured. The committee is advised that the proposed plan will save considerable paper work and accounting.

H.R. Rep. No. 54, 79th Cong., 1st Sess. 8 (1945).

The problem with invoking this statement as indicating Congressional intent specifically to authorize printing is that the "project" for which "specific authority" was secured appears to be the creation of the Working Capital Fund, not the underlying printing. This conclusion flows from the statement that "the proposed plan will save considerable paper work and accounting." It seems very unlikely that the "proposed plan" would have been the operation of the central duplicating service, because that service was already in operation and thus would not "save considerable paper work and accounting." The better reading of this sentence is that it refers to the actual change brought about by the appropriations act, namely the creation of the Working Capital Fund. Because it was an alteration of existing procedures, it might reasonably have been thought to create a savings in paper work and accounting. It also should be noted that the "proposed plan" appears to be synonymous with the "project" in the previous sentence. It appears, therefore, that, insofar as the quoted paragraph indicates Congressional intent specifically to authorize, the project being authorized was the creation of the Working Capital Fund.

This legislative history thus does not indicate a Congressional intent specifically to authorize GSA's printing operations. As a result, we believe that our original analysis of section 293, contained in our September 13, 1993 opinion, still applies. Accordingly, we reaffirm our conclusion that section 207 applies to GSA's printing operations.

Mr. HORN. Now, let me just finish on a few questions. Some of these, the staff will send them directly to you, and we will put them in the record at this point. I'm just wondering, if there is one thing we ought to take a look at, it's probably the Citizens Guide to the Freedom of Information Act, which the subcommittee and full committee take great interest in, since it is prepared between the Congressional Research Service and this committee staff.

Mr. KELLEY, you are responsible for marketing noncongressional publications. How does GPO go about promoting publications that have a broad interest to the public and has the Citizens Guide, essentially, on the best sellers list? What is your best sellers list? What's your top 10? You might want to file it for the record, if you don't have it.

Mr. KELLEY. Mr. Chairman, the Citizens Guide, for congressional documents, is indeed the very best.

Mr. HORN. This is the one to the Freedom of Information Act that you're thinking of.

Mr. KELLEY. Right.

Mr. HORN. Yes.

Mr. KELLEY. It is indeed a very good seller among congressional documents. It, in the last 18 months, has sold some, I think, 3,200 copies, and that's in addition to the distribution to the depository libraries of another 1,000 copies. So it is a very good seller.

We promote these things by including them in catalogs circulated by the Government Printing Office. We promote them with press releases. We promote their existence in direct mailings, sometimes in conjunction with the publishers of these documents. We have a fax system which alerts the public to new documents that have been published. And on our World Wide Web site we now have a complete reference file of all documents available for purchase, and it also permits the public to order electronically through the Web sites.

So we have a large number of marketing channels for making the public aware of these documents.

The best sellers list, we do have a best sellers list, and it tends to be seasonal. Recently, to give you a couple of examples, the IRS publications, this is from December, were very popular. There are Health and Human Services publications, like the one on international vaccination. There are things like educational statistics. And there are diet and other publications that get wide circulation, at very low cost, but quite popular with the American public.

Mr. HORN. What has happened to the Agricultural Yearbook? Is that a dead duck, or is that still going?

Mr. KELLEY. It is, I believe, no longer in print. I would have to check on that, but I don't think that the Agriculture Department is producing it the way they used to.

Mr. HORN. What has happened to some of the documents you printed 10, 20, 30, 40, 50 years ago, that might be congressional documents? Are they being thrown away, destroyed, or are you going to put them up for sale so some of us that collect those can go over and pay you a little money for them?

Mr. KELLEY. Of course, they are still available in depository libraries, regional libraries. We have just, in the last year, under a lot of pressure in our sales program, adopted a policy of keeping

a minimum stock. Because for the first time last year, in 13 years, the sales program lost money, for a number of reasons. But some of them are the things that I documented earlier, people putting controls over more popular publications and removing them from our program.

So, on an ordinary volume, we would have about an 18-month supply. Some more historic things, the U.S. Senate History, authored by Senator Byrd, and others, we would keep a 10-year supply. But we have made a commitment, when there is a public demand, to reprinting. So we will respond to that.

Mr. HORN. Very good.

Mr. DiMARIO. May I add to that?

Mr. HORN. Yes.

Mr. DiMARIO. Prior to 1978, we received direct appropriations for our workforce and facilities in the sales program. In 1978, the law was modified to put us on a self-sustaining basis, so we must recover the cost of all of our publications through that sales program.

The result of that is that in the storage, long-term, of publications, there are constant costs being added to the publication, and it reaches a point where it is easier to look toward potential reprint at a later date or to recover the information in some other way. So we have had to slim our inventory down substantially, in the process.

Mr. HORN. Very good. I have no further questions.

I am going to ask the ranking member, Mrs. Maloney from New York, if she has any questions?

Mrs. MALONEY. Sure. Thank you.

Good morning.

Mr. DiMARIO. Good morning.

Mrs. MALONEY. Mr. DiMario, I'd just like to understand a little bit about the electronic printing procurement program at GPO. I understand that it's extremely efficient. What is the average turnaround time, from the time that an agency submits a printing job to the GPO and getting a final printed document? What is your turnaround time?

Mr. DiMARIO. Well, I can't tell you an average time, because all documents are quite different. You can have a 10-page document, and you can have a 2,000-page document.

Mrs. MALONEY. Just say, for instance, a 2,000-page document, what is the turnaround time?

Mr. DiMARIO. Well, we attempt, on any document, to produce the document within the timeframe that the agency asks us to produce it. They give us a time that they need the publication distributed to them.

When the order comes into our office, the requisition comes in, our customer service group looks at that, places it with our printing procurement folks. It then goes out on our bid information system so that it's up electronically, and people can then bid on that.

We normally are not producing the publication in-house for the agencies. The bid time has, depending on the product, a certain timeframe. It may be a 3-day bid period because the agency needs the document in 2 weeks. But if they need it a longer period down the road, it will be a longer term.

When we go out with that bid information, the contractors can then bid on the product. We go through awarding the contract to the contractor, and the contractor, in bidding on it, is assuring us that they will deliver the product to the agency in the timeframe that we have asked for. We have a 95 percent timely delivery capability, and that is what our record is, from the printing contractors.

But as to a specific job, to give you an average turnaround time is just difficult to do.

Mrs. MALONEY. So how much of your printing do you do in-house now?

Mr. DiMARIO. We do approximately 25 percent of the printing in-house; 75 to 80 percent is done through the procured process.

Mrs. MALONEY. And what is the average cost, in a general sense, of a job printed in-house by GPO versus the average cost of a job printed through the competitive system? Is the competitive system more or less than printing in-house in GPO?

Mr. DiMARIO. It is, generally speaking, cheaper to procure the product on the outside.

Mrs. MALONEY. Really. It's cheaper outside. That's interesting.

Mr. DiMARIO. Yes.

Mrs. MALONEY. And what determines whether an agency printing job goes into the competitive process or gets printed in-house by GPO? And can an agency be assured that its job will go into the competitive system?

Mr. DiMARIO. What determines it is whether or not the product is, in fact, a procurable product. Not all products are procurable.

If you look at the true cost, as opposed to just this average statement of whether something is cheaper on the outside, on an average, or cheaper on the inside, on an average, the jobs that we do in-house, we believe, are not generally procurable jobs, that these are jobs that require enhanced security, a great deal of interface with the agency that is creating the information, that we need to go back and forth with that agency, and there are timeliness issues that are concerned with it.

So let's take, for example, we do the postal cards in-house for the Postal Service. That's a repetitive job. It's done on particular dedicated equipment. We believe we get the lowest cost and we get the security of this particular document for the Postal Service. They, obviously, believe the same thing. They have been with us for many, many years, and we have dedicated equipment to do that.

We do the same thing for passports. That is a dedicated structure requiring high security, and we deal with the customer agency on that.

Mrs. MALONEY. Now, what is the procedure now? I understand that the Vice President's reports on the National Performance Review were not printed through GPO. Say I'm an agency and I decide I don't want to go through GPO. Do they have to go through GPO?

Mr. DiMARIO. That's what the law requires.

Mrs. MALONEY. The law requires it.

Mr. DiMARIO. Yes.

Mrs. MALONEY. And I understand now that you charge an agency a 6 percent fee for each printing job?

Mr. DiMARIO. That's correct.

Mrs. MALONEY. What would it cost an individual agency to run a procurement operation similar to yours? Could they do it for 6 percent of the printing cost for the year, do you think?

Mr. DiMARIO. We don't believe so. The 6 percent encompasses an enormous range of services to the agency.

Mrs. MALONEY. Yes, I can imagine.

Now, if an agency procures with you, and then you tell them you have competitively bid it and Company X has gotten the job, what if the agency has had a bad experience with Company X and doesn't like the quality of their work, can they reject that printer, based on quality of work, and ask for another one?

Mr. DiMARIO. We look at the performance record of each contractor. And if the agency has expressed a negative view and they have documented all of that bad performance, that is considered in the issue of whether or not a contract gets awarded.

We have a system of debarment that mirrors the debarment structure in the rest of Government. Contractors have property rights in contracts when they perform those things, and they have a right to contest issues. So we look at performance against a standard. And if the contractor's performance is bad for a particular reason, we will note that in the awarding of contracts. They may not get the job, but we do not automatically debar them.

Mrs. MALONEY. Mr. DiMario, how do you keep the performance record of a contractor? Do you computerize it?

Mr. DiMARIO. Yes, it's all computerized.

Mrs. MALONEY. It's all computerized?

Mr. DiMARIO. Yes, job by job.

Mrs. MALONEY. Job by job, but then is it central?

Mr. DiMARIO. They are all computerized.

Mrs. MALONEY. Job by job, or centralized, too?

Mr. DiMARIO. It's all centralized. We have a procurement information control system, and the data that we collect on individual contractors and contract performance is put into that.

Mrs. MALONEY. So contract performance data is entered into a centralized, computerized system?

Mr. DiMARIO. To the best of my knowledge, yes.

Mrs. MALONEY. Now, I am interested in this. I would like to ask, and maybe we will put it in a series of questions, if you would get back to the committee on how you track performance data. I can understand how you can have one contractor, you've got it over there, but how do you put it into a centralized system that a procurement officer then can plug into to see what the performance data is in the past?

Do you understand?

Mr. DiMARIO. Absolutely.

Mrs. MALONEY. I would like to see the paperwork on it.

Mr. DiMARIO. And we do that for every contract. We have that data, and we look at it, but we cannot automatically debar someone simply because the agency has said they don't like them.

Mrs. MALONEY. I understand that.

Now, I understand that, historically, one of the reasons that we started to use GPO was to make sure that we had copies of Government work for the library, for the history of our country.

Mr. DiMARIO. That's correct.

Mrs. MALONEY. And that this was really put into place to really control printing, make sure that documents were kept, so the history of the work of the various agencies was kept in a good way, centrally, for our country.

Do you think it would work if we could just require that the various agencies deposit their work into the library? Do we have to go through GPO to make sure the work gets into library?

Mr. DiMARIO. Well, I would submit, the current law requires that if an agency does not come through GPO, and has been granted a waiver to do their own work, that they are required now to supply the depository libraries with copies of their publications at their own expense. That is not being done, and that is one of the great problems that we have had over and over again. Agencies are not following the law as it exists.

Mrs. MALONEY. That is a problem, if they are not following that.

Mr. DiMARIO. And that's the current law, that's not a change in the law. If they come through us, we charge those publications that go to the depository libraries to our salaries and expense account for the depository libraries. That is some \$30 million that the Superintendent of Documents administers to put publications into the depository system. But agencies that are not coming through GPO are still required to go to the depository structure, through the Superintendent of Documents, at their own expense. They have not done that.

An accommodation of a number of years ago was for the agencies to give us two copies of their publications, which we would then catalog and index and turn into microfiche so we could distribute it to the libraries, and they would not bear the expense. That's not what the law says; it was a pure accommodation, administratively. And we still can't get them to do it.

Mr. KELLEY. If I might add something here, we have, for depositories, they may select among some 6,000 classifications of documents. They do this every year. We put this into a computer. We have somebody in our procurement office, every time an agency orders printing, we immediately put into our system a requirement for the required number of documents to satisfy the depository system.

If each agency dealt independently with each library, there would be millions of transactions that the agencies and the individual libraries would have to manage themselves.

Mrs. MALONEY. My time is up, but I have one short, cost-saving question.

Mr. DiMARIO. Sure.

Mrs. MALONEY. I would like to ask the chairman if I can ask it, because my time is up?

Mr. HORN. Certainly.

Mrs. MALONEY. In your testimony, you indicated that a \$30,000 Department of Labor printing job could have been procured through GPO for \$3,000, and that you could have saved the department another \$2,500 through your cost-saving measures.

Could you describe for us those cost-saving measures, and would the agency have been required to use those measures if the document had been printed by GPO?

Mr. DiMARIO. Well, had they come directly to GPO, GPO would not have printed the publication. It would have placed the contract out with a contractor around the country. And following their specific specifications, we would have gone and purchased that for the \$3,000, the statement that you made. That was acquired through a quick printer somewhere in their area. The agency had an issue of how quickly they needed the turnaround on a document, and so they went to the local printer.

The issue in the publication, in terms of measures that we would take to reduce it to this even lower level, this \$500-level, it would still be a procured job. It would not be through GPO. It would still be on one of our contracts, but we would cut it down to one color, as opposed to a multiple-color document. We would use a different binding on it. We would have a longer lead time in order to meet that requirement.

Had they come to us in a timely fashion, with a long enough lead time, and changed their own external requirements, not information requirements, not what was in the publication itself, but simply the use of single color as opposed to multiple color, you could change the cost of that publication dramatically. But even using their specifications, we could have purchased it for one-tenth the price.

Mrs. MALONEY. Last year, when we were considering the reports elimination bill that passed out of the subcommittee, Representative Dunn proposed an amendment that would require any printing job of over 1,000 pages to go through the GPO. Some of us thought that was a little extreme, because very short seminar notice from each office would have to be printed by GPO.

But could you explain to me what a reasonable page limit would be, and explain to me the purpose of Representative Dunn's amendment and what a reasonable page limit would be?

Mr. DiMARIO. I don't know what page limitation is reasonable. You can deal in dollars. The limitation that I'm aware of that was being put into the law, or that people were attempting to negotiate, was one that was publications that cost less than \$1,000. Well, \$1,000 for printing buys an awful lot of printing.

And we can buy, competitively, a much larger quantity of printing for that \$1,000 than an agency simply going out on a sole source basis, and going out on the outside and buying that. There are printing contractors around that will come in—because we group these orders together. We would take that \$1,000-job, and we might have \$10,000-jobs that look the same in the various features to it, and we can group them together, put them out as a single contract, and a contractor will bid on that and give us a very, very low price.

The agency will get its requirements, each of the agencies will get them, and they will save money on it. And the issue that we always have is timeliness of delivery. From an agency standpoint, many of them just simply want to go out and buy from the closest vendor. If they come to us and ask for a waiver, and they give justification for the waiver to go out and do that, and it seems that it's not something we can buy more effectively than they can, we will grant the waiver and allow that to happen.

Does that answer your question?

Mrs. MALONEY. Thank you. I thank the chairman for giving me a little bit of extra time.

Mr. HORN. I thank the gentlewoman from New York.

We are running a little behind. The rest of the questions will be submitted to you, if you don't mind.

Mr. DiMARIO. Yes, sir.

Mr. HORN. You are still under oath in answering them. We will put them in the record following this insertion, which is the memorandum I sent members of the committee on May 5, including the attachment of Assistant Attorney General Walter Dellinger and the memorandum of May 31, 1996, "Government Printing Office Involvement in Executive Branch Printing," so everybody can see that.

[The information referred to follows:]

DAN BURTON, INDIANA
CHAIRMAN

ONE HUNDRED FIFTH CONGRESS

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT
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TO: MEMBERS OF THE SUBCOMMITTEE ON GOVERNMENT
MANAGEMENT, INFORMATION AND TECHNOLOGY, COMMITTEE ON
GOVERNMENT REFORM AND OVERSIGHT

FROM: STEPHEN HORN, CHAIRMAN

DATE: May 5, 1997

RE: GMIT Oversight Hearing: "Government Printing Office and Executive
Branch Information Dissemination"
311 Cannon, Thursday, May 8, 1997 9:30am

On Thursday, May 8th, the subcommittee will hold an oversight hearing on the Government Printing Office and executive branch information dissemination. The focus will be on certain weaknesses in current Federal information dissemination.

BACKGROUND

The Government Printing Office (GPO) is a legislative branch agency that prints, binds, and distributes the publications of the Congress as well as the executive branch. These publications are distributed through two main channels: the depository library program and sales through catalogues and government book stores. GPO was created in 1860 to replace a system of contract printing then used by Congress that had proved inefficient, unreliable and vulnerable to corruption. GPO was established to give Congress immediate, reliable service in a work environment under its direct control.

GPO contracts out to private printers for approximately 75 percent of all its printing needs. Of the remaining work handled in-house, about half is for Congress. Over the years improved productivity resulting from technology has enabled GPO to make substantial reductions in staffing requirements. In the mid-1970's, on the threshold of GPO's conversion from hot metal typesetting to electronic photo composition, GPO employed nearly 8,200 persons, more than 1,000 of whom were in the composition area alone. Today, GPO has 3,674 employees, fewer than at any time

in this century. In the past 4 years GPO's staffing has been reduced by 25 percent. In GPO's composition area, approximately 400 employees remain.

The information dissemination programs of GPO's Superintendent of Documents include the distribution of publications to Federal depository libraries nationwide, cataloging and indexing, distribution to recipients designated by law, and distribution to foreign libraries designated by the Library of Congress which in turn agree to send copies of their official publications to the Library. These programs are funded by annual appropriation. The Superintendent of Documents also operates a nationwide sales program funded entirely by sales revenues, and distributes publications for Federal agencies which reimburse us for this service. Altogether, GPO distributes about 100 million copies of Government publications per year. In FY 1996, total revenues for these programs were \$106.2 million.

The Federal Depository Library Program (FDLP) makes selected Government publications available in libraries across the country. In addition, "GPO Access",¹ the GPO website, is now available on the Internet and by telephone modem. Searchable databases on WAIS (Wide Area Information Server) are available to the public at no cost through participating Federal Depository Libraries or directly through this site.

GPO sells through mail orders and Government bookstores approximately 20,000 different publications that originate in various Government agencies. Many of the publications are available electronically as well as printed and bound. Increasingly, both channels of distribution are accomplished via various electronic media in accordance with "The Government Printing Office Electronic Information Access Enhancement Act of 1993."

ISSUES/SCOPE OF HEARING

1. Federal Depository Library Program and Fugitive Documents

Under Title 44, U.S. Code, the Government Printing Office disseminates Federal publications to public, academic, law, and Federal agency libraries -- designated as depositories -- across the Nation. The availability of information about the activities of Government, both congressional and executive, is a cornerstone of Federal information dissemination policies.

There is one depository library in nearly every congressional district. Libraries are designated as depositories for Government publications by Senators and

¹ <http://www.access.gpo.gov>

Representatives as well as by law. GPO sends the libraries copies of all Government publications processed through GPO that are not purely administrative in nature, cooperatively sponsored, or classified for reasons of national security. In return for receiving Government information products at no cost, the libraries are required to make them available to the public without charge and to provide appropriate assistance to users.

The majority of the depository libraries are selective depositories, meaning they tailor their Government publications acquisitions to local needs. They choose from among 7,000 organizational and series categories. Fifty-three libraries, or roughly one per State, are regional depositories that receive every publication distributed by the Federal Depository Library Program. They are required to retain permanently every Government publication they receive.

Many publications produced by the executive branch are not submitted to GPO and as a result are never included in the Federal Depository Library Program. These documents are known as fugitive documents and they are becoming increasingly common. Their absence from depository library collections impairs public access to Government information.

GPO's legal authority to compel executive branch agencies to submit documents to it for dissemination has been the subject of legal challenges. Most recently, a 1996 Justices Department memorandum (the Dellinger memorandum)², prepared at the request of the General Services Administration, advised executive branch agencies that GPO, as a legislative branch agency, could not exercise decision-making control over executive branch printing and information dissemination. The memorandum argued that this is unconstitutional under the doctrine of the separation of powers.

While many studies of the fugitive document problem have been conducted, the exact number of publications missing from the Federal Depository Library Program has been difficult to isolate. Documents normally become fugitives due to their production outside of GPO, such as in agency printing plants. A contributing factor is the increasing frequency of electronic systems agencies use to produce and disseminate their own documents.

In FY 1996, nearly 57,000 unique titles were included in the FDLP. GPO estimates that the total number of tangible Government information products that fall in the scope of the FDLP is almost twice as large. This means about half of the eligible documents were not being distributed through the Program. The missing publications were primarily scientific and technical in nature. They were not printed through GPO

² Attachment 1

and the originating agency did not provide copies for depository distribution as required by Title 44. Most of the missing publications were provided to the National Technical Information Service (NTIS) of the Commerce Department.

Fugitive documents defeat the purpose of the Depository Program and undermine public access to information that can be critical to their lives. Historically, the Depository Program has relied heavily on the ability of the Program to automatically obtain material as it is produced or procured through GPO. Growing emphasis on electronic dissemination and decreasing compliance with statutory requirements make the intent of the Depository Program increasingly difficult to fulfill.

2. The Paperwork Reduction Act (PRA)

The Paperwork Reduction Act of 1995 reflects congressional intent to encourage wider use of electronic distribution as an integral part of the Government information management. It acknowledges that private, non-governmental information providers perform an essential public service by expanding availability of information to the public. Government agencies cannot be expected to match the dynamism and creativity of information providers in transforming Government information into valuable consumer information products. Consequently, non-government information distributors play a valuable role in advancing information policy objectives.

The PRA requires executive branch agencies to ensure timely and equitable public access to agency information. This includes a requirement that agencies make information available on a non-discriminatory and non-exclusive basis to any public or private entity, including for redissemination of the information or for its incorporation in another information product or service.

The PRA assigns broad responsibility for enforcing these policies to the Office of Information and Regulatory Affairs at the Office of Management and Budget. Under the Act, executive agencies are discouraged from entering into exclusive licence agreements with organizations (private or public) that establish discriminatory monopoly distribution of public information. Also, user fees for information are intended not to exceed the cost of dissemination of the information.

However, GPO as well as industry and library groups report that many executive branch agencies engage in restrictive information practice contrary to the PRA. The Office of Information and Regulatory Affairs has been criticized for not aggressively enforcing the policies of the PRA. Much of the information subject to these restrictive dissemination practices is in "fugitive documents" not submitted to GPO for distribution to the depository libraries.

3. Electronic Access Initiatives

The revolution in information technology has made access to congressional and other Federal information through GPO more universal. GPO Access online service provides free access to more than 70 Federal databases developed through GPO's electronic prepress systems, including the Congressional Record, congressional bills and reports, House and Senate calendars, the U.S. Code, and other publications.

GPO Access allows users to locate electronic products available via the Internet and to order Government publications online. In addition to congressional information, it includes a wide variety of executive and judicial information such as the Federal Register, the Code of Federal Regulations, the Commerce Business Daily, and Supreme Court opinions, as well as Government Information Locator Service (GILS) records for a growing number of Federal agencies. GPO Access is the only Government online service providing access to a wide range of information from all three branches of the Federal Government, and the only service providing official access to this important Government information.

WITNESSES

Mr. Michael DiMario, Public Printer, Government Printing Office
Accompanied by Mr. Wayne Kelley, Superintendent of Documents, Government Printing Office

Mr. Daniel S. Jones, President, NewsBank, Inc. (appearing on behalf of the Information Industry Association)

Ms. Wendy Lechner, Legislative Director, Printing Industries of America

Mr. Robert L. Oakley, Washington Affairs Representative, American Association of Law Libraries (appearing on behalf of a coalition of library associations)

STAFF CONTACT

If you have additional questions, please contact Mark Uncapher, counsel, at 225-5147.



Attachment

U. S. Department of Justice

Office of Legal Counsel

1

Office of the
Assistant Attorney General

Washington, D. C. 20530

May 31, 1996

MEMORANDUM FOR EMILY C. HEWITT
GENERAL COUNSEL, GENERAL SERVICES ADMINISTRATION

From: Walter Dellinger *WD/tp*
Assistant Attorney General

Re: Government Printing Office Involvement in Executive Branch Printing

You have asked us to analyze the constitutional implications of the involvement of the Government Printing Office ("GPO") in executive branch printing and duplicating under the authority of section 207(a) of the Legislative Branch Appropriations Act, 1993, Pub. L. No. 102-392, 106 Stat. 1703, 1719 (1992) (codified at 44 U.S.C. § 501 note), which was recently amended by section 207(2) of the Legislative Branch Appropriations Act, 1995, Pub. L. No. 103-283, 108 Stat. 1423, 1440 (1994).¹ You have also posed a more general question as to "whether GPO may undertake any decision-making role in printing for the Executive Branch." While we have previously expressed our tentative view that such legislative branch involvement in executive branch affairs would contravene separation of powers principles,² we now face the issue in the context of a specific congressional enactment investing in the GPO the authority to control a significant proportion of executive branch printing and duplicating. See 44 U.S.C. § 501 note. We find that the GPO is subject to congressional control, and conclude that the GPO's extensive control over executive branch printing is unconstitutional under the doctrine of separation of powers. Finally, we make various observations about potential liability of contracting officers who act consistently with this opinion but contrary to the Comptroller General's view, which we reject.

¹ Letter to Walter Dellinger, Assistant Attorney General, Office of Legal Counsel from Emily C. Hewitt, General Counsel, General Services Administration, (Aug. 23, 1994).

² See, e.g., Memorandum for Sheila F. Anthony, Assistant Attorney General, Office of Legislative Affairs, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: Government Printing Provisions in H.R. 3400 and S. 1824 (Apr. 1, 1994) (separation of powers violation would occur if public printer received power to control printing and duplicating operations in executive and judicial branches).

I

In the early years of the Republic, Congress endeavored to devise a satisfactory contract-based system for printing its official documents. In 1846, for example, Congress established an orderly contract process "for supplying the Senate and House of Representatives . . . with the necessary printing for each[.]" J. Res. of Aug. 3, 1846, § 1, 29th Cong., 1st Sess., 9 Stat. 113, 113. Printing projects "of the respective houses" were divided into classes for which the Secretary of the Senate and the Clerk of the House of Representatives accepted sealed bids. *Id.* The 29th Congress further established a committee on printing "consisting of three members of the Senate and three members of the House." *Id.*, § 2, 9 Stat. at 114. The committee on printing was entrusted with "[the] power to adopt such measures as may be deemed necessary to remedy any neglect or delay on the part of the [chosen low-bid] contractor to execute the work ordered by Congress, and to make a *pro rata* reduction in the compensation allowed, or to refuse the work altogether, should it be inferior to the standard[.]" *Id.*

The contract system devised in 1846 apparently proved unsatisfactory. The 32d Congress revisited the subject of public printing only six years later and added structure and oversight to the basic framework established in 1846. *See* J. Res. of Aug. 26, 1852, 32d Cong., 1st Sess., 10 Stat. 30. The 32d Congress created the position of "superintendent of the public printing," set qualification requirements for the position,¹ and directed the superintendent of the public printing to serve as a clearinghouse for the printing projects of the Congress and the departments and bureaus of the executive branch. *Id.*, § 3, 10 Stat. at 31. Congress chose to retain the contract-based approach to printing, however, and assigned to the superintendent of the public printing the tasks of soliciting bids for public printing work and delivering the materials submitted by Congress and the executive branch "to the public printer or printers in the order in which it shall be received, unless otherwise ordered by the joint committee on printing." *Id.*, §§ 3-4, 10 Stat. at 31.

The 32d Congress also provided for the election of "a public printer for each House of Congress, to do the public printing for the Congress for which he or they may be chosen, and such printing for the executive departments and bureaus of the government of the United States as may be delivered to him or them to be printed, by the superintendent of the public printing." *Id.*, § 8, 10 Stat. at 32. Congressional dissatisfaction with the slow pace of public printing was manifest. The 32d Congress set a 30-day deadline for each public printing project, *id.*, § 5, 10 Stat. at 32, and expressly stated that "the public printer or printers may be required by the superintendent [of the public printing] to work at night as well as through the day upon the public printing, during the session of Congress, when the exigencies of the public service require it." *Id.*, § 10, 10 Stat. at 34. Finally, the 32d

¹ Congress explained that the "superintendent shall be a practical printer, versed in the various branches of the arts of printing and book-binding, and he shall not be interested directly or indirectly in any contract for printing for Congress or for any department or bureau of the government of the United States." J. Res. of Aug. 26, 1852, § 2, 10 Stat. at 31.

Congress created the Joint Committee on the Public Printing to resolve disputes "between the superintendent of the public printing and the public printer," *id.*, § 12, 10 Stat. at 34, and to adopt such measures as may be deemed necessary to remedy any neglect or delay in the execution of the public printing" of the Congress. *Id.*, § 12, 10 Stat. at 35.

In 1860, Congress completely overhauled the public printing system. J. Res. of June 23, 1860, 36th Cong., 1st Sess., 12 Stat. 117. The 36th Congress "authorized and directed" the superintendent of public printing "to have executed the printing and binding authorized by the Senate and House of Representatives, the executive and judicial departments, and the Court of Claims." *Id.*, § 1, 12 Stat. at 117. More importantly, the 36th Congress completely abandoned the contract printing system by creating the GPO.⁴ Specifically, the 36th Congress granted the superintendent of public printing sweeping authority to contract for "the necessary buildings, machinery, and materials" and to hire all "hands necessary to execute the orders of Congress and of the executive and judicial departments, at the city of Washington." *Id.*, §§ 1-2, 12 Stat. at 117; *see also United States v. Allison*, 91 U.S. 303, 304 (1875) ("This resolution dispensed with the public printers appointed by the two Houses of Congress, and placed the whole subject of public printing in charge of the superintendent."). At that point in time, the GPO was simply conceptualized as a more expeditious and less partisan alternative to the existing contract system of public printing. *See Applicability of Post-Employment Restrictions on Dealing with Government to Former Employees of the Government Printing Office*, 9 Op. O.L.C. 55, 56-57 (1985).

The 39th Congress tightened the legislative branch's control over the GPO by creating the office of "Congressional printer" and abolishing the position of superintendent of public printing. Act of Feb. 22, 1867, ch. 59, §§ 1-3, 14 Stat. 398-99. *See also Allison*, 91 U.S. at 306 (congressional printer "was given the same powers as the superintendent of public printing"). Under the terms of the 1867 enactment, the Senate was empowered to "elect some competent person, who shall be a practical printer, to take charge of and manage the government printing office." *Id.*, § 1, 14 Stat. at 398. The congressional printer was "deemed an officer of the Senate," *id.*, § 2, 14 Stat. at 398, and was directed to "superintend the execution of all the printing and binding for the respective departments of the government now required by law to be executed at the government printing office." *Id.*, § 2, 14 Stat. at 399 (emphasis added). Thus, the 39th Congress not only declared that the head of the GPO was its own officer, but also set forth its assumption that the executive branch was obligated to submit printing and binding projects to the GPO.

In 1895, Congress consolidated the GPO's control over public printing but changed the method for selecting the head of the GPO. Act of Jan. 12, 1895, ch. 23, 53d Cong., 3d Sess., 28 Stat. 601 ("1895 Act"). In section 17 of the 1895 Act, Congress created the position of public printer and prescribed an appointment process modeled after the

⁴ Congress chose to retain the contract system for obtaining "all paper which may be necessary for the execution of the public printing[.]" J. Res. of June 23, 1860, § 7, 12 Stat. at 118-19.

Appointments Clause, U.S. Const. art. II, § 2, cl. 2: "The President of the United States shall nominate and, by and with the advice and consent of the Senate, appoint a suitable person, who must be a practical printer and versed in the art of bookbinding, to take charge of and manage the Government Printing Office." 1895 Act, § 17, 28 Stat. at 603.¹

The 1895 Act extended the exclusive domain of the public printer to virtually all printing operations throughout the entire federal government. Specifically, section 87 of the 1895 Act decreed that "[a]ll printing, binding, and blank books for the Senate or House of Representatives and for the Executive and Judicial Departments shall be done at the Government Printing Office, except in cases otherwise provided by law." *Id.* § 87, 28 Stat. at 622. Additionally, section 31 of the 1895 Act dictated that "[a]ll printing offices in the Departments now in operation, or hereafter put in operation, by law, shall be considered a part of the Government Printing Office, and shall be under the control of the Public Printer[.]" *Id.*, § 31, 28 Stat. at 605. Finally, section 31 stated that "[a]ll persons employed in said printing offices and binderies [in the Departments] shall be appointed by the Public Printer, and be carried on his pay roll the same as employees in the main office, and shall be responsible to him[.]" *Id.* Thus, in the 1895 Act, Congress took the position that the GPO controlled virtually all printing and binding work in all three branches of the federal government.

The 65th Congress used an appropriations bill passed in 1919 to make explicit what had been implicit in prior public printing legislation: the GPO was subordinated to the Joint Committee on Printing, which effectively controlled the allocation of the printing and binding work of the executive and judicial branches. See Act of Mar. 1, 1919, Pub. L. No. 65-314, § 11, 40 Stat. 1213, 1270 ("1919 Act"). Section 11 of the 1919 Act granted to the Joint Committee on Printing the "power to adopt and employ such measures as, in its discretion, may be deemed necessary to remedy any neglect, delay, duplication, or waste in the public printing and binding and the distribution of Government publications[.]" *Id.* Moreover, the 1919 Act mandated that "on and after July 1, 1919, all printing, binding, and blank-book work for Congress, the Executive Office, the judiciary, and every executive department, independent office, and establishment of the Government shall be done at the Government Printing Office[.]" *Id.* The 65th Congress provided for only one exception to the rigid rule that all printing must be performed by the GPO: "such classes of work as shall be deemed by the Joint Committee on Printing to be urgent or necessary to have done elsewhere than in the District of Columbia for the exclusive use of any field service outside of said District." *Id.*

One year after Congress passed the 1919 Act, President Wilson took action to curtail the expanding role of the Joint Committee on Printing. "On May 13, 1920, President Wilson vetoed an appropriation Act on the ground that it contained a proviso that certain

¹ *Cf.* U.S. Const. art. II, § 2, cl. 2 (President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint" Officers of the United States).

documents should not be printed by any executive branch or officer except with the approval of the Joint Committee on Printing." Constitutionality of Proposed Legislation Affecting Tax Refunds, 37 Op. Att'y Gen. 56, 62 (1933) ("Legislation Affecting Tax Refunds"). In explaining his decision to veto the bill, President Wilson offered the following comments:

I regard the provision in question as an invasion of the province of the Executive and calculated to result in unwarranted interference in the processes of good government, producing confusion, irritation, and distrust. The proposal assumes significance as an outstanding illustration of a growing tendency which I am sure is not fully realized by the Congress itself and certainly not by the people of the country.

Id. at 62-63 (quoting veto message of President Wilson). Thus, despite initial executive branch acquiescence in the involvement of the GPO in the printing work of executive departments and bureaus, the executive branch promptly objected to the explicit insertion of the Joint Committee on Printing into executive functions.

In 1949, Congress reaffirmed that "all printing, binding, and blank-book work" for the executive and judicial branches had to be done at the GPO unless the Joint Committee on Printing authorized some other arrangement. Act of July 5, 1949, Pub. L. No. 81-156, 63 Stat. 405, 406 (1949). The 81st Congress, however, expressly exempted the Supreme Court of the United States from this requirement,⁶ id., thereby effectively minimizing the influence of the legislative branch with respect to judicial branch printing. The 81st Congress offered no justification for treating the printing projects of the executive and judicial branches differently, but did indicate generally that the legislation was intended "to modify the law in order to permit essential Government printing to be produced in the best interest of the Government." H.R. Rep. No. 841, 81st Congress, 1st Sess. 1 (1949), reprinted in 1949 U.S. Code Cong. Serv. 1515, 1515. Although the 81st Congress conceded "that obvious savings of time and expense can be effected by producing much printing within the area where use is required," approval of such action by the Joint Committee on Printing remained a prerequisite for all executive branch printing "within the area where use is required." Id.

The modern legislative scheme governing public printing was enacted in 1968 by the 90th Congress, which produced an act collecting all of the public printing provisions in Title 44 of the United States Code.⁷ See Act of Oct. 22, 1968, Pub. L. No. 90-620, 82 Stat. 1238

⁶ The printing of the Supreme Court traditionally had been treated in a different manner than executive and legislative branch printing. See Supreme Court Expenses, 8 Op. Att'y Gen. 219, 222 (1856).

⁷ The public printing initiative resulted from congressional concern that "many laws ha[d] been enacted" affecting the printing scheme set forth in the 1895 Act, but these laws had not uniformly amended the 1895 Act, "with the result that the body of printing laws ha[d] grown haphazardly." S. Rep. No. 1621, 90th Cong., 2d Sess. 1 (1968), reprinted in 1968 U.S.C.C.A.N. 4438, 4439.

(1968) ("1968 Act"). The 1968 Act purported "to restate in comprehensive form, without substantive change, the statutes in effect on January 14, 1968, relating to public printing and documents[.]" S. Rep. No. 1621, 90th Cong., 2d Sess. 1 (1968), reprinted in 1968 U.S.C.C.A.N. 4438, 4438-39. Therefore, the initial version of Title 44 contained the requirement that "[a]ll printing, binding, and blank-book work for Congress, the Executive Office, the Judiciary, other than the Supreme Court of the United States, and every executive department, independent office and establishment of the Government, shall be done at the Government Printing Office[.]" 1968 Act, § 501, 82 Stat. at 1243. Likewise, the two exceptions to this rule remained in place: (1) "classes of work the Joint Committee on Printing considers to be urgent or necessary to have done elsewhere"; and (2) printing in field printing plants operated by an executive department, independent office or establishment, and the procurement of printing by an executive department, independent office or establishment from allotments for contract field printing, if approved by the Joint Committee on Printing." *Id.* In other words, all executive branch printing had to be performed at the GPO unless the Joint Committee on Printing authorized some other arrangement.

Once Congress collected and codified all of the public printing provisions in Title 44, few changes in the statutory scheme took place for several decades. In 1990, however, the 101st Congress reinforced the GPO's monopoly on executive branch printing with a public printing provision inserted in the Legislative Branch Appropriations Act, 1991 ("1991 Act"), Pub. L. No. 101-520, 104 Stat. 2254 (1990). Section 206 of the 1991 Act foreclosed the use of federal funds in most instances to procure printing from any commercial source unless the GPO was involved in the transaction. *Id.*, § 206, 104 Stat. at 2274. The "printing" subject to this restriction included "the process of composition, platemaking, presswork, binding, and microform, and the end items of such processes." *Id.*, § 206(c), 104 Stat. at 2274.

Two years later, the 102d Congress used another legislative branch appropriations act to broaden the language of the provision prohibiting public printing by commercial sources without the involvement of the GPO. *See* Legislative Branch Appropriations Act, 1993 ("1993 Act"), Pub. L. No. 102-392, § 207, 106 Stat. 1703, 1719-20 (1992). The 1993 Act expanded the proscription to include the expenditure of any funds appropriated in any fiscal year for any printing from any source other than the GPO. *Id.*, § 207(a)(1), 106 Stat. at 1719. The 1993 Act also added "silk screen processes" to the definition of "printing," *id.*, § 207(a)(3), 106 Stat. at 1720, thereby enlarging the scope of the GPO's exclusive domain.

Congress's effort to accord the GPO control over executive branch printing reached its zenith in 1994 with the passage of the Legislative Branch Appropriations Act, 1995 ("1995 Act"), Pub. L. No. 103-283, 108 Stat. 1423 (1994). Section 207(2) of the 1995 Act expanded the definition of "printing" subject to GPO control to include "duplicating." *Id.*, §

207(2), 108 Stat. at 1440. Thus, the principal statutory provision restricting executive branch printing,⁴ which is codified at 44 U.S.C. § 501, note currently reads as follows:

(1) None of the funds appropriated for any fiscal year may be obligated or expended by any entity of the executive branch for the procurement of any printing related to the production of Government publications (including printed forms), unless such procurement is by or through the Government Printing Office.

(2) Paragraph (1) does not apply to (A) individual printing orders costing not more than \$1,000, if the work is not of a continuing or repetitive nature, and, as certified by the Public Printer, if the work is included in a class of work which cannot be provided more economically through the Government Printing Office, (B) printing for the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or (C) printing from other sources that is specifically authorized by law.

(3) As used in this section, the term "printing" includes the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes.

Although President Clinton approved the 1995 Act, he issued a signing statement that expressed serious concerns about the ever-increasing "involvement of the Public Printer and the Government Printing Office in executive branch printing related to the production of Government publications." Statement by President William J. Clinton Upon Signing the Legislative Branch Appropriations Act of 1995, H.R. 4454, 30 Weekly Comp. Pres. Doc. 1541, 1542 (July 22, 1994). Specifically, the President's statement framed the constitutional issues this way:

The Act raises serious constitutional concerns by requiring that executive branch agencies receive a certification from the Public Printer before procuring the production of certain Government documents outside of the Government Printing Office. In addition, the Act expands the types of material that are to be produced by the Government Printing Office beyond that commonly recognized as "printing."

Id. To ameliorate the perceived constitutional defects in 44 U.S.C. § 501, note, the President chose to interpret the amendments to the public printing provision narrowly. See, e.g., Communications Workers v. Beck, 487 U.S. 735, 762 (1988) ("federal statutes are to be

⁴ Chapter 11 of Title 44, United States Code, contains a host of statutory provisions dealing with the general subject of executive and judicial branch printing. See 44 U.S.C. §§ 1101-1123. Those statutes, however, focus primarily upon the logistical concerns of the public printer in responding to printing orders from the executive and judicial branches.

construed so as to avoid serious doubts as to their constitutionality"). First, the President expressed his intention to restrict "the exclusive authority of the Government Printing Office" over executive branch printing "to procurement of documents intended primarily for distribution to and use by the general public." Statement by President William J. Clinton, 30 Weekly Comp. Pres. Doc. at 1542. Second, the President interpreted the concept of "duplicating" to "encompass only the reproduction inherent in traditional printing processes, such as composition and presswork, and not reproduced by other means, such as laser printers or photocopying machines." *Id.*

The legislative branch did not accept President Clinton's narrowing construction of 44 U.S.C. § 501 note. In response to an inquiry from Senator Wendell H. Ford, the Chairman of the Joint Committee on Printing, the Comptroller General issued an opinion concluding that, in virtually all instances, "executive agencies procuring duplicating services involving the use of high-speed duplicating equipment must do so through the GPO[.]" B-251481.4 (C.G. Sept. 30, 1994). Thus, the interpretations of 44 U.S.C. § 501 note espoused by the executive branch and the legislative branch are in direct conflict. Faced with these divergent views, you asked us for "an interpretation of the proper construction of Title 44 of the U.S. Code." We conclude that, to the extent that 44 U.S.C. §§ 501 & 501 note require all executive branch printing and duplicating to be procured by or through the GPO, those statutes violate constitutional principles of separation of powers and that executive branch departments and agencies are not obligated to procure printing by or through the GPO.

II

The constitutional doctrine of separation of powers prohibits Congress from performing functions that are not legislative or in aid of the legislative process. Except through the passage of legislation, Congress may not seek to control the performance of functions that are "beyond the legislative sphere." See *Bowsher v. Synar*, 478 U.S. 714, 733-34 (1986); see also *Metropolitan Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise*, 501 U.S. 252, 274 (1991) ("*MWAA*") (separation of powers doctrine is directed at "forestall[ing] the danger of encroachment 'beyond the legislative sphere'"); *INS v. Chadha*, 462 U.S. 919 (1983); *Hechinger v. Metropolitan Washington Airports Auth.*, 36 F.3d 97 (D.C. Cir. 1994), *cert. denied*, 115 S. Ct. 934 (1995); *FEC v. NRA Political Victory Fund*, 6 F.3d 821 (D.C. Cir. 1993), *cert. dismissed*, 115 S. Ct. 537 (1994); cf. *Buckley v. Valeo*, 424 U.S. 1, 137-41 (1976) (*per curiam*).

In *Bowsher*, for example, the Supreme Court held that Congress violated the doctrine of separation of powers by vesting non-legislative functions in an official who was subject to Congress's control. *Bowsher* involved the Balanced Budget and Emergency Deficit Control Act of 1985. That statute established maximum federal budget deficits for each of the succeeding five years. If the projected deficit for any year exceeded the statutory maximum, the Comptroller General was to specify for the President spending reductions necessary to bring the deficit under the designated ceiling. The President was then required to issue a sequestration order effectuating the Comptroller General's cuts. 478 U.S. at 717-18. The

Comptroller General is appointed by the President from a list of nominees submitted by the Congress and "is removable only at the initiative of Congress." *Id.* at 728 (Comptroller General may be removed by joint resolution of Congress finding one of five statutorily enumerated causes).

The Court characterized the Act as giving the Comptroller General executive functions. *id.* at 733, but did not hold that the Comptroller General is an agent of Congress. If it had, the Court's holding would have been the unremarkable observation that Congress may not vest itself or one of its agents with executive authority. The Act, however, did not give Congress any formal authority to vote on or dictate any particular of how the Comptroller General would exercise the executive functions that the Act conferred upon him. In other words, Congress had no formal power over the exercise of the Comptroller General's executive functions. Nevertheless, the Court viewed the removal power as giving Congress the ability to coerce the Comptroller General to conform to the "legislative will" *See id.* at 729.⁹

Thus, the constitutional doctrine of separation of powers forbids Congress from vesting non-legislative functions -- specifically, in the case of your inquiry, executive functions -- in the GPO if Congress retains control over the GPO. First, we will examine the extent to which Congress controls the GPO. Then, we will determine whether the functions that the GPO performs may be characterized as falling within the legislative sphere.

A. Congressional Control of the GPO

One significant indication of control is whether Congress perceives an agency or official as its agent or as an entity of the legislative branch. *See Bowsheer*, 478 U.S. at 731-32. The GPO, since its inception, has been conceptualized as a congressional entity.¹⁰ *See*

⁹ The GPO argues that *Bowsheer* only prohibits vesting executive functions in officials over whom Congress holds the power of removal. Letter to Walter Dellinger, Assistant Attorney General, Office of Legal Counsel from Anthony J. Zagami, General Counsel, United States Government Printing Office, , at 1 (Sept. 22, 1994). We agree that the President may remove the public printer at will. Further, we agree that non-legislative functions may not be vested in an official who is removable by Congress. Nevertheless, we cannot read *Bowsheer* as applying exclusively to those officials who are removable by Congress. The Supreme Court could not have been clearer in holding that the Constitution prohibits Congress from retaining any sort of control that allows it to exert its "legislative will" outside the legislative sphere. *See, e.g.*, 478 U.S. at 729-32 (discussing significance of Congress's view that the Comptroller General is within the legislative branch).

¹⁰ Indeed, in 1867, Congress expressly declared that the GPO was to be run by the congressional printer, who was elected by the Senate and "deemed an officer of the Senate." Act of Feb. 22, 1867, ch. 59, §§ 1-2, 39th Cong., 2d Sess., 14 Stat. 398-99 (1867). The major public printing reform of 1895 gave rise to the position of public printer and prescribed a new method for selecting this head of the GPO -- nomination by the President and appointment "by and with the advice and consent of the Senate." 1895 Act, § 17 28 Stat. at 603. This selection system, however, did not necessarily transform the Public Printer into an officer of the executive branch. *See Bowsheer*, 478 U.S. at 758 n.25 (Stevens, J., concurring) (identifying Public Printer as "obvious congressional agent[]" despite appointment by President); cf. also *Mistretta v. United States*, 488 U.S. 361.

Allison, 91 U.S. at 307 (head of GPO "is more responsible to Congress than to any other authority"). "Discussion of the GPO's role in government, both in Congress and by GPO officials themselves, has consistently indicated that 'the Joint Committee on Printing constitute[s], in fact, a board of directors' for the GPO, and that the GPO 'is, and was, designed to be primarily under the control of Congress.'" International Graphics, Div. of Moore Business Forms, Inc. v. United States, 4 Cl. Ct. 186, 197 (1983). Moreover, the Comptroller General has consistently concluded that the GPO "is under the legislative branch of the Government."¹¹ 36 Comp. Gen. 163, 165 (1956); 29 Comp. Gen. 388, 390 (1950). In addition, the Courts have taken the same view. See, e.g., Thompson v. Sawyer, 678 F.2d 257, 264 (D.C. Cir. 1982) (GPO "is a unit of the legislative branch"); accord Lewis v. Sawyer, 698 F.2d 1261, 1262 n.2 (D.C. Cir. 1983) (Wald, J., concurring) (GPO is "a legislative unit performing a support function for Congress"); International Graphics, 4 Cl. Ct. at 197 ("GPO appears to be a unit of the legislative branch").

The Supreme Court has also noted that an official is subservient to the branch of government that has the authority to control and supervise the conduct of that official's functions. See Bowsher, 478 U.S. at 730. On this score, both the Public Printer and the GPO are beholden to Congress in several significant respects. As we have previously explained:

The Congressional Joint Committee on Printing ("JCP") retains supervisory control over a host of GPO's functions. See, e.g., 44 U.S.C. § 103 (power to remedy neglect, delay, duplication, and waste); id. § 305 (approval of GPO employees' pay); id. § 309 (revolving fund available for expenses authorized in writing by the JCP); id. § 312 (requisitioning of materials and machinery with approval of the JCP); id. § 313 (examining board consisting of GPO personnel and a person designated by the JCP); id. § 502 (approval of contract work); id. § 505 (regulation of sale of duplicate plates); id. §§ 509-517 (approval of paper contracts); id. § 1914 (approval of measures taken by the Public Printer to implement the depository library program)[.]

Applicability of Post-Employment Restrictions on Dealing with Government to Former Employees of the Government Printing Office, 9 Op. O.L.C. 55, 57 (1985) (footnote omitted). What we deduced in 1985 is equally accurate today: "This relationship to

408-11 (1989) (members of Sentencing Commission in judicial branch appointed and subject to removal by President). In any event, while the 1895 modification of the appointment process may have reduced the direct control of Congress over the GPO, the 1919 Act firmly established the preeminence of the JCP -- composed of members of Congress -- in matters of public printing. See 1919 Act, § 11, 40 Stat. at 1270.

¹¹ In ascribing to Congress the views of the Comptroller General, we are fortified by the Supreme Court's decision in Bowsher, which held that Congress controls the Comptroller General. See 478 U.S. at 727-32.

Congress appears to preclude a conclusion, either in fact or as a constitutional matter, that the GPO is not an arm of Congress." *Id.* (citation omitted).

Given the level of control over the GPO that Congress exercises today through the JCP,¹² as well as the history of the relationship between the GPO and Congress, we believe that the GPO is subject to the sort of control that Congress may not exercise over an actor that performs non-legislative functions.¹³ We now turn to consider whether the GPO's functions fall outside the legislative sphere.

B. The Nature of GPO's Functions

44 U.S.C. § 501 establishes that "[a]ll printing, binding, and blank-book work for Congress, the Executive Office, the Judiciary, other than the Supreme Court of the United States, and every executive department, independent office and establishment of the Government, shall be done at the Government Printing Office[.]"¹⁴ Subsection (1) of 44 U.S.C. § 501 note bolsters the provision granting the GPO exclusive control of virtually all the printing work of the executive branch: "None of the funds appropriated for any fiscal year may be obligated or expended by any entity of the executive branch for the procurement of any printing related to the production of Government publications (including printed forms), unless such procurement is by or through the Government Printing Office."¹⁵ "Printing" is defined in subsection (3) of 44 U.S.C. § 501 note to include "the processes of composition, platemaking, presswork, duplicating, silk screen processes, binding, microform, and the end items of such processes." By enacting these statutory provisions, Congress has

¹² The JCP, which "consist[s] of the chairman and four members of the Committee on Rules and Administration of the Senate and the chairman and four members of the Committee on House Administration of the House of Representatives[.]" 44 U.S.C. § 101, is undeniably a congressional entity.

¹³ We need not determine whether Congress has ever actually sought to exert the control that it, by statute, has retained. The mere existence of this ability to control the GPO raises the separation of powers bar against vesting the GPO with non-legislative functions. See *Bowers*, 478 U.S. at 730 (dismissing as beside the point Justice White's vigorous argument that "[r]ealistic consideration of the nature of the Comptroller General's relation to Congress . . . reveals that the threat to separation of powers . . . is wholly chimerical." *Id.* at 774 (White, J., dissenting)).

¹⁴ Section 501 contains two exceptions to this sweeping rule; both of the exceptions require the approval of the JCP. 44 U.S.C. §§ 501(1) & 501(2). In 1984, we declared the JCP approval provisions unconstitutional with respect to operations outside the legislative branch. Memorandum for William H. Taft, IV, Deputy Secretary of Defense, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel. *Re: Effect of INS v. Chadha on 44 U.S.C. § 501, "Public Printing and Documents"*, at 3-6 & n.5 (Mar. 2, 1984); *Constitutionality of Proposed Regulations of Joint Committee on Printing*, 8 Op. O.L.C. 42, 51 & n.14 (1984).

¹⁵ Subsection (2) of 44 U.S.C. § 501 note sets forth three exceptions to this sweeping prohibition. These exceptions include printing for the Central Intelligence Agency, the Defense Intelligence Agency, and the National Security Agency, as well as all printing for other sources that is specifically authorized by law. In addition, subsection (2) creates an exception for small printing orders. The exception for small printing orders, which requires the certification of the public printer, is discussed in section III(B) of this opinion.

forbidden the executive branch to expend funds on printing that is not procured by or through the GPO.

Congress may create and empower an entity such as the GPO to provide printing in aid of its legislative function. *Cf. Chadha*, 462 U.S. at 956 n.21 (recognizing authority of each House of Congress "to act alone in determining specified internal matters"). However, when Congress dictates that all executive branch printing and duplicating must be procured by or through the GPO, *see* 44 U.S.C. §§ 501 & 501 note the GPO necessarily acts outside the legislative sphere.

The GPO implicitly concedes -- as it must -- that its involvement in executive branch printing is beyond the legislative sphere, but asserts that such action does not violate separation of powers principles because its duties with regard to executive branch printing "are essentially ministerial and mechanical so that their performance does not constitute 'execution of the law' in a meaningful sense." *Bowsher*, 478 U.S. at 732. We doubt that the doctrine of separation of powers permits Congress to control functions outside the legislative sphere as long as such aggrandizement is in some sense *de minimis*. We need not resolve that issue here, however, because the experience of executive branch agencies under recent amendments to 44 U.S.C. § 501 note belies the GPO's characterization of its authority.

Under the current public printing regime, the GPO is obligated to "execute such printing and binding for the President as he may order and make requisition for." 44 U.S.C. § 1101. Nevertheless, the GPO controls the timing¹⁶ and the production of all printing work for the executive branch. 44 U.S.C. §§ 501 & 501 note. The public printer also determines "the form and style in which the printing or binding ordered by a department is executed, and the material and the size of type used[.]" 44 U.S.C. § 1105. Moreover, any executive branch officer in possession of printing equipment "no longer required or authorized for his service" must "submit a detailed report of them to the Public Printer." 44 U.S.C. § 312. The Public Printer possesses the statutory authority to "requisition such articles," which must then "be promptly delivered" to the GPO.¹⁷ *Id.* In sum, what began

¹⁶ The United States Court of Appeals for the District of Columbia Circuit has held that a congressionally controlled entity may not be given authority to delay an executive function. *See Hechinger v. Metropolitan Washington Airports Auth.*, 36 F.3d 97 (D.C. Cir. 1994), *cert. denied*, 115 S. Ct. 934 (1995).

¹⁷ The GPO and JCP have used this authority to strip executive branch agencies of their ability to engage in printing and duplicating. The experience of the Department of Veterans Affairs regional office in Philadelphia, Pennsylvania is illustrative. On March 26, 1993, the JCP advised the Secretary of Veterans Affairs that the regional office "ha[d] acquired a two color printing press and [was] conducting printing activities without the concurrence of this Committee." Letter to Hon. Jesse Brown, Secretary of Veterans Affairs from Hon. Wendell H. Ford, Chairman, Joint Committee on Printing, (March 26, 1993). The JCP instructed the Secretary of Veterans Affairs to "review this matter and take immediate action to transfer all printing requirements to the nearest Government Printing Office Regional Procurement Office and comply with section 312, 44 U.S.C. for disposition of this unauthorized equipment." *Id.* Ten months later, Senator Wendell Ford wrote to the

as a cooperative arrangement in 1860 that was mutually beneficial to the executive and legislative branches has become a system by which Congress -- acting primarily through the GPO and the JCP -- maintains an ever-increasing degree of control over executive branch printing. Because the GPO is subject to congressional control and because the GPO performs executive functions, we conclude that the language in 44 U.S.C. §§ 501 & 501 note requiring the executive branch to procure all of its printing by or through the GPO is unconstitutional and, therefore, inoperative.

C. Certification

You have also directed our attention to a provision of 44 U.S.C. § 501 note that you regard as inconsistent with Chadha. Specifically, subsection (2) of 44 U.S.C. § 501 note excludes from the class of printing work subject to GPO control "individual printing orders costing not more than \$1,000, if the work is not of a continuing or repetitive nature, and, as certified by the Public Printer, if the work is included in a class of work which cannot be provided more economically through the Government Printing Office[.]" Whether this provision involving discretionary certification by the public printer is understood as the exercise of legislative power or executive power, it plainly runs afoul of separation of powers principles. "If the power is executive, the Constitution does not permit an agent of Congress to exercise it. If the power is legislative, Congress must exercise it in conformity with the bicameralism and presentment requirements of Art. I, § 7" of the Constitution. MWAA, 501 U.S. at 276. As we have previously explained in the context of a public printing dispute, any statute that permits a congressional agent "to effect an exception to a legislated rule" is unconstitutional. See Memorandum for William H. Taft, IV, Deputy Secretary of Defense, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, Re: Effect of INS v. Chadha on 44 U.S.C. § 501, "Public Printing and Documents", at 4-5 n.5 (Mar. 2, 1984).

Although we have found a fatal constitutional defect in the statutory provision granting the public printer the authority to except certain small printing orders from the

Department of Veterans Affairs in his capacity as Chairman of the JCP to express dissatisfaction with the Department's response. Senator Ford demanded executive branch compliance with the desires of the JCP:

I ask that your Inspector General readdress these issues and that the Headquarters printing management organization be involved to facilitate the orderly transfer of work to GPO. I have asked the Public Printer to have his staff contact appropriate departmental officials to expedite this process. At your earliest convenience, please provide the Joint Committee with a listing of all printing and duplicating equipment, including its age, condition and cost, now on site at [the regional office in Philadelphia]. Please immediately remove the two color press and any similar equipment from this site in accordance with the provisions of section 312, 44 USC.

Letter to Hon. Jesse Brown, Secretary of Veterans Affairs, from Hon. Wendell H. Ford, Chairman, Joint Committee on Printing, at 1 (Jan. 13, 1994).

control of the GPO, we need not engage in a protracted discussion of the effect of this conclusion upon the balance of subsection (2) of 44 U.S.C. § 501 note. Subsection (2) simply creates an exception to the broad rule of 44 U.S.C. §§ 501 and 501 note, that all executive branch printing must be procured by or through the GPO. Because we have already determined that this requirement runs afoul of separation of powers principles, there is no reason to address the scope of the remaining exceptions to the general requirement.

III

It appears that the Comptroller General does not share our view regarding the constitutionality of the GPO's control over executive branch printing. See, e.g., Opinion for Senator Wendell H. Ford, Chairman of the Joint Committee on Printing, B-251481.4 (C.G. Sept. 30, 1994).¹⁸ You have asked whether contracting officers who act in a manner consistent with our opinion and in derogation of the Comptroller General's view will be subject to liability or sanction.

This opinion presents the official view of the executive branch; the Comptroller General's opinion may not carry legally binding effect, although it may be considered for whatever persuasive value it may offer. See Bowers, 478 U.S., at 733 (holding that statute unconstitutionally entrusted execution of laws to Comptroller General, a unit of the legislative branch, because "[i]nterpreting a law enacted by Congress to implement the legislative mandate is the very essence of 'execution' of the law"); see also Buckley, 424 U.S. at 137-41 (holding that officials whom Congress controls cannot participate in the issuance of advisory opinions that have legally binding effect outside the legislative branch). We further note that neither the Comptroller General nor the Inspectors General may initiate prosecutions on their own. Inspector General Act of 1978, 5 U.S.C. app.; United States v. Nixon, 418 U.S. 683, 693 (1974). Both the Comptroller General and the Inspectors General have the statutory authority to audit and disallow costs, see 31 U.S.C. §§ 3522-3530; 5 U.S.C. app. § 4(a)(1), (b), but these powers cannot be stretched so as effectively to encompass prosecutorial decisions.

With respect to the Comptroller General, the Supreme Court has held that the Constitution does not permit the Comptroller General to exercise authority with respect to executive functions. Bowers, 478 U.S. at 721-27. Although the Comptroller General may audit expenditures and in the course of doing so may express an opinion as to the propriety of costs incurred, the Comptroller General may not in any legally consequential sense "disallow" an expenditure or cost. Any statute purporting to give the Comptroller General

¹⁸ Separate statutory provisions vest in the Comptroller General the authority to relieve accountable officials and certifying officials of such liability. See 31 U.S.C. §§ 3527-3529. We have determined, however, that this grant of authority to a congressional agent violates separation of powers principles. See Memorandum for Janis A. Sposato, General Counsel, Justice Management Division, from John O. McGinnis, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Comptroller General's Authority To Relieve Disbursing and Certifying Officials From Liability (Aug. 5, 1991).

such authority is invalid. See, e.g., Hechinger v. Metropolitan Washington Airports Auth., 36 F.3d 97 (D.C. Cir. 1994), cert. denied, 115 S. Ct. 934 (1995); Memorandum for Janis A. Sposato, General Counsel, Justice Management Division, from John O. McGinnis, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Comptroller General's Authority To Relieve Disbursing and Certifying Officials From Liability (Aug. 5, 1991). Insofar as this position is not free of litigation risk, see Lear Siegler, Inc., Energy Prods. Div. v. Lehman, 842 F.2d 1102 (9th Cir. 1988), modified as to attorney fees, 893 F.2d 205 (9th Cir. 1989) (en banc); Ameron Inc. v. United States Army Corps of Engineers, 809 F.2d 979 (3d Cir. 1986), cert. granted, 485 U.S. 958 (1988), cert. dismissed, 488 U.S. 918 (1988).¹⁹ you have asked us whether there are additional specific measures that agencies may take to safeguard contracting officers.

It appears that, except for qui tam suits (which are discussed below), the only entity that could bring a civil or criminal action against a certifying official in court would be the executive branch, and more specifically the Department of Justice. Any actions considered by the Department of Justice would necessarily be in accord with the constitutional views expressed by the President in his signing statement and the opinions of this Office. Consequently, we see little risk to an officer who acts consistently with our interpretation.

Administrative liability poses separate issues, but ones that we believe may be allayed by GSA itself. Congress has attempted to provide an enforcement mechanism for the Anti-Deficiency Act, 31 U.S.C. § 1341(a), and other restrictions on appropriations by holding certain executive branch employees personally liable for amounts illegally authorized or disbursed. For example, 31 U.S.C. § 3528(a) provides that a certifying official is responsible for the legality of the proposed payment on a voucher and for repaying any payments that are illegal, improper, or prohibited by law. The Comptroller General uses the GAO's audit powers to determine what amounts are wrongfully spent or unallowable, and 31 U.S.C. § 3526(a) grants the Comptroller General the power to "settle all accounts of the United States Government and supervise the recovery of all debts finally certified by the Comptroller General as due the Government."

For funds determined to be illegally expended, the government may attempt to collect that debt pursuant to the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982, Pub. L. No. 97-365, 96 Stat. 1749, 1754 (1982) (codified at 31 U.S.C. § 3701 et seq.). Section 3716 of title 31, United States Code, and various regulations provide for administrative offset to collect claims due the United States, following notice of the prospective offset. 4 C.F.R. pts. 101-105; 41 C.F.R. §§ 105-55.001 to 105-

¹⁹ The Department of Justice has consistently taken the position that these lower court cases were wrongly decided and are inconsistent with the Supreme Court's decision in Bowsher. We continue to adhere to this view and will assert this position if an appropriate case arises. See Brief of United States, Hechinger v. Metropolitan Washington Airports Auth., No. 94-7036, at 30-33 (D.C. Cir. Apr. 11, 1994).

56.013.²⁰ When a current employee owes the debt, the agency may attempt to collect it through administrative offset. 41 C.F.R. § 105-56.001.

Thus, the danger for the certifying officials is that the Comptroller General will determine that a given payment is illegal and that the certifying official is administratively liable for these expenditures. The statutory structure appears to be designed to enforce collection of claims or debts owed to the United States. Section 3711(a) of title 31, United States Code, provides that the head of an executive agency shall try to collect a claim of the United States Government for money or property arising out of the activities of the agency.

The statute also, however, allows the agencies to compromise claims of less than \$100,000, and, pursuant to the GSA's regulations, GSA may decline to collect on a claim when it determines that the claim is legally meritless. 41 C.F.R. § 105-55.008(b); see also 41 C.F.R. § 104.3(d) (joint DOJ and GAO regulations providing for termination of legally meritless claims).²¹ GSA could thus offer reassurances to its officers and the agencies contracting with it that any debts found by the Comptroller General to be owed by GSA or other agency officers as a result of payments made on the contracts at issue would be legally without merit. GSA could further assure its employees and the employees of agencies contracting with it for routine photocopying services that it would not seek to recoup such amounts through administrative offset. Although GSA has government-wide authority to collect claims owed the United States through administrative offset, other agencies could offer reassurances to their employees that they would not seek in any way to collect as claims owed the United States amounts determined to fall outside the scope of section 207(a)(1), notwithstanding any contrary determination on the part of the Comptroller General.

Assuming that GSA did not make such a determination in advance, it still could shield executive branch employees from administrative liability on a case-by-case basis. Following a determination by the Comptroller General that a certifying officer owed a debt to the United States, the burden would be on GSA to issue the notice to the employee of the determination that part of his or her salary was to be offset. If it failed to issue the notice of debt, notwithstanding a Comptroller General directive that it do so, the Comptroller General would seem to have no recourse, other than to notify Congress of the dispute. Congress' possible actions would be general ones, against the GSA itself, and not against the particular employee.

²⁰ Federal regulations authorize the GSA to collect, compromise, or terminate collection efforts on debts owed the United States arising from activities under GSA's jurisdiction. All the contracts at issue -- whether GSA is paying for services, or collecting for services rendered -- arise under GSA's jurisdiction. See, e.g., 41 C.F.R. pt. 105-55.

²¹ The regulations also provide that waivers of liability for government employees, if authorized by law, may be requested from the General Accounting Office. 41 C.F.R. §§ 105-56.004(g), 105-56.005(b). It is unlikely, however, that GAO would authorize a waiver if it determined that payments for the copier rentals would violate section 207.

Even if GSA did perform the offset, it would remain possible, consistent with the regulation, to relieve the contracting official of liability. GSA has the authority promptly to refund an amount already offset when a debt is waived or otherwise found not owing the United States, or when GSA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay. 41 C.F.R. § 105-56.012. The regulations do not state who may make such a finding. A finding by the Department of Justice or GSA superiors that no debt was owing and that a refund should be made would relieve the officer of individual liability.

The only remaining theoretical risk of exposure would arise from qui tam suits under the False Claims Act, 31 U.S.C. §§ 3729-3733. Such suits would almost assuredly fail, however, because such actions should either be defeated pursuant to a motion to dismiss or on the merits. In brief, in order to state a claim under 31 U.S.C. § 3729, a plaintiff must demonstrate that someone knowingly submitted or caused to be submitted a false or fraudulent claim to the government.²² If an official simply authorizes payment on a contract lawfully entered into, it is difficult to envision how liability could lie under the False Claims Act. Although, in some situations, False Claims Act cases may be brought against

²² Section 3729(a) establishes liability for:

Any person who --

- (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;
- (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
- (3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;
- (4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- (5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- (6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or
- (7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

government officials in their personal capacity, the circumstances at issue here do not appear to give rise to such claims. Even if the officer is required to certify that he or she understands that the claim is being paid in accordance with law, such a certification presumably would not be determined to be a false statement, with respect either to rental contracts or photocopying contracts, given this Office's determination that payment of the contracts would be in accord with the law. The contract would have been clearly authorized at the time it was signed (pursuant to a clear executive branch interpretation of the law), the agency would have authorized all the relevant actions (including payment), and the contractor would have fulfilled its obligations under the contract. Thus, there would be no false statement and the intent element -- knowingly submitting a false statement -- would also be absent.

Even if a matter were filed against an individual certifying officer, the Department of Justice would have the authority to represent the officer. 28 C.F.R. § 50.15. The Department is authorized to undertake such representation when "the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General or his designee determines that providing representation would otherwise be in the interest of the United States." *Id.* Those circumstances would seem to be present here, although the Civil Division would make the determination regarding representation, whether by the Department or by outside counsel.²³

For the foregoing reasons, we believe that any agency officials involved in the decision to certify or disburse money pursuant to the three types of contracts discussed herein face little or no litigation risk arising from the decision to certify or disburse.

IV

To the extent that 44 U.S.C. §§ 501 and 501 note require all executive branch printing and duplicating to be procured by or through the GPO, those statutes violate constitutional principles of separation of powers. We further find that the provision in subsection (2) of 44 U.S.C. § 501 note authorizing the Public Printer to certify exceptions to the general rule of printing by or through the GPO is unconstitutional, but we need not ascertain the implications of that determination given our conclusion that executive branch departments and agencies are not obligated to procure printing by or through the GPO. Finally, we perceive little or no risk of liability or sanction to contracting officers who act consistently with this opinion.

²³ It should also be noted that, under the False Claims Act, the United States has significant control over suits filed under that Act alleging that the contracting officer somehow submitted a false statement in order to get a claim allowed or paid. As a procedural matter, the United States has the opportunity to intervene in a False Claims Act action filed by a relator and may, following intervention, move to dismiss. If the relator objects, however, it has the opportunity to have its objections heard. 31 U.S.C. § 3730(c)(2)(A).

Mr. DiMARIO. Thank you, Mr. Chairman. May I say one thing?

Mr. HORN. Yes.

Mr. DiMARIO. I would like to invite you, Mr. Chairman, and all members of the committee and staff, any staff that you want, to come down and visit us at the Government Printing Office, and see what we do and how we do it, in terms of electronic products, what we do in-house. I think it might be revealing to you that we operate quite a modern facility, and we do act, in my judgment, for the benefit of the taxpayers.

Mr. HORN. Well, I thank you very much, Mr. DiMario and Superintendent Kelley.

Mr. Holstein, I'm sorry we didn't call on you, but I appreciate the role you are doing there as the Chief Financial Officer/Comptroller. We have high regard for the Chief Financial Officers throughout the Federal Government, and that includes the legislative branch. So thank you for joining all of us.

Mr. HOLSTEIN. Thank you, Mr. Chairman.

Mr. HORN. Thanks very much for coming.

If the next panel will come forward, we will begin the testimony on the panel: Daniel S. Jones, Robert L. Oakley, and Wendy Lechner.

OK. If you would all rise and raise your right hands?

[Witnesses sworn.]

Mr. HORN. The clerk will note that all three witnesses have affirmed.

We will begin with Daniel S. Jones, the president of NewsBank, Inc., appearing on behalf of the Information Industry Association.

I might say to staff, all of the relevant résumés will be included after we introduce each witness. And, of course, your full statement is put in after we introduce you, and we would like you to summarize it for us, so we can get down to questions and have a dialog.

STATEMENTS OF DANIEL S. JONES, PRESIDENT, NEWSBANK, INC., ON BEHALF OF THE INFORMATION INDUSTRY ASSOCIATION; ROBERT L. OAKLEY, WASHINGTON AFFAIRS REPRESENTATIVE, AMERICAN ASSOCIATION OF LAW LIBRARIES; AND WENDY LECHNER, LEGISLATIVE DIRECTOR, PRINTING INDUSTRIES OF AMERICA, INC.

Mr. JONES. Thank you very much, Mr. Chairman, and good morning.

NewsBank is a mid-sized news information publishing company. My objective today is to bring you an example of the type of problem which occurs when an agency of the Government ignores the Paperwork Reduction Act.

I'm not an expert on PRA, but I want to relate an injustice that has injured my company, that has occurred by an agency not adhering to PRA. The bottom line of my presentation is that the Government, in the form of an agency, specifically the NTIS, is competing with my business by republishing material which is not even Government information. It is copyrighted private information that is being sold by the NTIS to my customers, which are university libraries.

Now, as you can imagine, this disturbs me greatly; also, that my taxes and the taxes of my employees are subsidizing my competitor, the Government.

I am very much in favor of the public access to Government information, on the other hand. I have been a trustee of my local public library for 10 years. I have been a member of the American Library Association for 25 years. All of my customers are librarians, and a number of my products actually facilitate the further use of Government information.

Now, since the passage of PRA, my fellow IIA members and I have witnessed a number of agency initiatives that fly in the face of both the language and the intent of PRA. I can best explain these problems by citing the experiences of my company.

I began NewsBank 25 years ago and now employ 400 people in Connecticut, Vermont, and Florida. It may surprise you to learn that my company, whose primary mission is to provide access to news sources, is so concerned about Government competition and Government information policy.

In fact, when I started my company, I certainly didn't think that unfair competition for my business would arise from the Federal Government. Sadly, this is precisely what I have been battling for over a year now, with the World News Connection, a product published by NTIS. It is competitive because it contains much of exactly the same foreign news content that I publish with my business, and other publishers in our industry republish, exactly the same content.

When NTIS created this competitive product about 2 years ago, it appears that they did not demonstrate any significant effort to comply with the PRA. As a result, much of its content, as I mentioned, duplicates the very same information which is found in my products and that of other publishers that are private.

As I understand it, Congress intended NTIS to be subject to the PRA. In fact, the IIA and its members have consistently brought this situation to the attention of the officials at that agency and OIRA. Sometimes I wonder, however, if the agency's only real knowledge of PRA is how to avoid the act, not how to implement it.

Best I can tell, NTIS did not take adequate efforts to give public notice about its plans for its new product, the World News Connection. If they did, it was only to determine whether they could capture a profitable market share.

Now, another significant point that I would like to make is that when I publish a product, I must cover the entire cost of that product to bring it to market. Apparently, this practice is not required of the NTIS. As the director of NTIS has stated, the translation costs for the foreign news content in his product are at least subsidized by the taxpayers. That's a significant savings to NTIS, and one that I can't match.

Now, on top of the ability to avoid covering some of the costs of publishing its competitive product, NTIS doesn't pay any taxes. About half of my profits are paid out to various Government taxing bodies. That means that I have to earn twice as much to improve my products for my customers as the NTIS.

Now, in addition to these points, I don't know how a foreign news information product falls under the purview of the NTIS. It's not scientific; it's not technical; and it's not engineering information.

For over a year I have worked to resolve this issue. I regret to tell you that no progress has been made. The NTIS World News Connection product is on the market. The harm has been incurred by my company, in terms of lost customers and potentially future sales.

If this trend continues, my company may have to stop investing in some of its information products, and a significant number of my employees may lose their jobs. My company's case demonstrates, gentlemen, that unless a strong enforcement of the PRA is forthcoming, NTIS and other Government agencies will continue to compete with the private sector, to the detriment of private sector jobs.

Now, is the loss of private company jobs the objective of an agency of the Department of Commerce? I certainly hope not. NewsBank's experiences with the World News Connection are especially relevant to today's hearings, in that NTIS has demonstrated the dangers that lie in not strictly enforcing PRA principles.

I would also like to comment that, for the most part, the GPO seems to have been a responsible disseminator of Government information, but there is no guarantee that, in a rapidly changing information marketplace, tomorrow's GPO may not be pressured to act more like a competitor, nor that agencies will use the GPO to avoid the mandates of the PRA. As I see it, one certain way to avoid these potential problems is to require enforcement of PRA.

My point, therefore, is that I believe passage of the PRA is not enough, not enough without enforcement. We would recommend that the subcommittee review the efforts that OIRA has taken to ensure that agency officials follow the specific requirements of the law. And gentlemen, we are very much appreciative of your starting that process by holding this hearing here today.

The information industry does not make this request lightly, but only after attempts to deal directly with OIRA and several other agencies that have proven to be unsuccessful. My case, as I have described to you, as well as that of other industry situations, indicate that there appears to be a general lack of enthusiasm for the PRA within the executive branch, and only congressional intervention would seem to be the way to overcome this condition.

In closing, I would like to express my appreciation to you all and the subcommittee, and for the opportunity to appear today. My goal in being here is to find a way to stop the Government from competing with my product, my taxpaying business. I hope you can help achieve that goal.

Thank you.

[The prepared statement of Mr. Jones follows:]

Introduction

Thank you, Mr. Chairman, and good morning. My name is Dan Jones and I am President of NewsBank, inc., a mid-sized information publishing company headquartered in New Canaan, Connecticut. I am appearing today on behalf of the Information Industry Association ("IIA"), where NewsBank is a member. NewsBank and IIA appreciate this opportunity to present the views of the information industry regarding the Government Printing Office ("GPO") and executive branch information dissemination.

These topics are of great interest to America's information industry. IIA, as the leading trade association representing information providers, distributors and managers, has long recognized the importance of government adopting and enforcing sound information policies. Many of IIA's 550 members acquire information from government sources and incorporate it into products that serve a variety of markets both here and abroad. Their interests in the open dissemination of government data is clear. The value-added products these firms design to meet customer needs rely on the ability to obtain government information without restriction, so that they may analyze, organize and present it to meet customer needs.

Information produced and distributed by NewsBank and other members of IIA is used by educators, researchers, the press, attorneys, businessmen and government officials. A vibrant and competitive private sector information industry is key to the efficient functioning of today's service-based economy. The broad range of information available from government sources fuels the engine of the information industry and commerce in general. This fact alone would justify that government adhere to sound information policies.

However, the larger, social importance of the free flow of information by and about government cannot be ignored either. The ability of citizens to obtain and use information about their government, for any lawful purpose, is key to the functioning of a sound democratic system. This has been an accepted part of the American landscape for well over two centuries. Now that we are entering an era where technology is forcing us to rethink how information is gathered and used, it is crucial that the core principle of unfettered access to and use of government information sources be strengthened and enforced. I am pleased to offer some thoughts today on how best to accomplish this task.

Established Principles for Dissemination of Executive Branch Information

The timing of this oversight hearing is very appropriate, Mr. Chairman. The Committee on Government Reform and Oversight paved the way in the 104th Congress for passage of the *Paperwork Reduction Act of 1995* ("PRA"), now codified in Title 44 of the U.S. Code. PRA brought to closure nearly ten years of effort by the information industry, the library community, and consumer groups, together with executive and legislative branch officials, to fashion a set of sound information policies to govern

federal executive agencies. In many respects, PRA is a landmark statute, establishing rules for federal officials to follow as they proceed toward an era where the provision of government information will be greatly affected by the advent of new technologies and new demands by the public.

If I leave you with only one message from the information industry today, it would be this: Despite all the effort and time involved in crafting this statute, its spirit and mandates are being ignored. Without the intervention of Congress, IIA is fearful that PRA will remain little more than words.

From my experience and that of other IIA members, I can report that the Office of Information and Regulatory Affairs ("OIRA") has failed to fulfill its duty to provide clear direction to agencies about their obligations and responsibilities under the law. This has led to numerous major and minor violations of both the intent and the clear language now contained in Title 44 of the U.S. Code. If the trend continues, government activities will threaten a number of private sector information providers and will decrease, rather than increase, the amount of information available to the American public.

Therefore, as the Subcommittee considers executive branch dissemination policies, including the role of the Government Printing Office ("GPO"), IIA would ask that you keep the spirit and letter of PRA in mind. GPO is a vital source of executive branch information to the general public, including private sector redisseminators of this data. As with other agencies who disseminate executive branch agency information directly or on behalf of one another, GPO's information dissemination policies should follow the sound guidelines set forth in PRA. In this manner, GPO could effectively carry out its role as a disseminator of executive branch materials, whose release is always subject initially to the principles of the Act. IIA is concerned, as I explain in more detail below, that passage of PRA has not attained the results anticipated by many supporters, including the information industry. Only clear statements and restatements of its principles in any legislation governing executive branch dissemination activities will assure any hope that the purpose behind PRA is achieved.

PRA mandates several sound practices and policies to govern the dissemination of government information. It establishes a clear allocation of responsibilities among OIRA and agency heads for establishing and enforcing guidelines. It prescribes specific duties in regard to information resource and systems management. In terms of the core principle of open government information, the Act mandates that each agency "ensure that the public has timely and equitable access to the agency's public information" and requires that this important goal be accomplished by "encouraging a diversity of public and *private* sources for information based on government public information." 44 USC 3506(d)(1), emphasis added.

Thus, PRA wisely recognizes that society as a whole benefits when agencies are encouraged to release publicly-funded data. However, it also anticipates instances in which agencies -- faced with increased demands and decreased budgets -- would be

tempted, especially in this era of new technologies, to provide government information without proper restraint. Unrestrained marketplace activity by federal agencies in today's state of development for the information industry could easily destroy some businesses and threaten the advantages of our society where citizens have traditionally relied heavily on non-government sources of information about their publicly-funded servants and institutions.

By requiring that agencies consider the private sector as part of its core dissemination responsibility, PRA seeks to achieve a proper balance between public and private roles in providing information to citizens. To strengthen this balance, Secs. 3506(d)(2) and (3) require agencies to "regularly solicit and consider public input on the agency's information dissemination activities; and provide adequate notice when initiating, substantially modifying or terminating significant information dissemination products."

The proscription about marketplace activities by federal agencies is even clearer in Sec. 3506(d)(4) of Title 44. In sum, this portion of U.S. law assures that no agency can restrict the availability of information to the public; cannot regulate the use, resale or redissemination of such information; and cannot establish user fees for public information that exceed the cost of dissemination.

NewsBank and other IIA members strongly supported passage of PRA precisely because of these clear and unequivocal mandates. However, since passage of the Act, IIA has witnessed a number of agency initiatives that fly in the face of both the language and spirit of PRA. I can best explain the problem by citing the experiences of my company.

The NewsBank Experience with Executive Branch Information Policy

NewsBank is a mid-sized information service provider with facilities in Connecticut, Vermont and Florida. I began the company 25 years ago and now employ 400 people. We are large enough to provide microfiche, CD-ROM, and online products incorporating over 1,000 information sources. NewsBank products contain information gathered from newspapers, newswires, business journals, and periodicals, as well as historical and scholarly documents. Although we serve customers worldwide, we are small enough to maintain an entrepreneurial character of the company -- an essential element to succeeding in today's highly competitive, global information marketplace, where customers demand speedy delivery of accurate and reliable information.

It may surprise you to learn that a company providing access to news sources is so concerned about government information policy. When I started NewsBank 25 years ago, I certainly did not suspect that unfair competition for my business would arise from the federal government. Sadly, that is precisely the battle I have been fighting for over a year now.

In today's global marketplace, the exchange of information about other nations is increasingly important, and as is the case here in the United States, often the best sources of information are in newspapers and journals. Among the many products offered to our customers are ones that provide access to foreign news sources. NewsBank is among a number of private sector information providers that compete in providing foreign news information as a part of their products and services, and we have competed well and effectively with others in the private sector partners.

About two years ago, a new type of competitor began to enter the marketplace. Unlike our private sector counterparts, however, this producer of foreign, copyrighted news sources was the National Technical Information Service ("NTIS"). As you know, NTIS is an executive branch agency under the Department of Commerce. It was created strictly to gather and disseminate scientific, technical and engineering information originally collected and generated by various taxpayer funded executive branch entities. Although self-funding, NTIS was clearly intended by Congress to be subject to the PRA.

I cannot testify that the agency is ignorant of the Act and its provisions. In fact, IIA has consistently reminded NTIS officers, as well as officials at OIRA, of the mandates laid out in the law. But I sometimes have wondered if the only real knowledge these government servants have is how to avoid the Act.

The particular information dissemination practice in question is whether -- given the mandates of PRA -- NTIS can legally offer a service known as the *World News Connection* ("WNC"). WNC is an electronic database of foreign news sources provided in English. Some sources originate in English, while others must be translated. How such a product falls under the purview of NTIS has always been a mystery to me, since it is neither scientific, technical, nor engineering information. Yet, this points precisely to one of the problems that has grown as NTIS has developed more and more as a distributor for other agencies' information. The agency interprets broadly its core mission and because it is self-funding, aggressively seeks information from other agencies that can be turned into money-making ventures.

In fairness to NTIS, I would note that the agency supplied foreign press clippings to the public in print form for about 20 years. Originally, the product was funded by the taxpayer-supported intelligence agencies. Objections to federal publication of this information would have been undoubtedly justified on several grounds. The subject matter of the information was not created by government, but rather by private sector entities that copyrighted the data. In terms of NTIS involvement, these foreign press reports only barely related to science, technology or engineering. However, many in the public found this information of value, and at the time there really were no private sector republishers of similar data. Some may have objected to a self-funding agency like NTIS taking over distribution, but neither Executive Order A-130 nor PRA existed at the time to provide guidelines for the agencies or the public to assess the appropriateness of executive branch dissemination activities.

Indeed, Mr. Chairman, I would be less than candid if I did not state for the record that NewsBank and other private sector providers gained some advantage from the government's supply of this data. For example, while NewsBank did not use or redistribute the NTIS data, we did create and provide an index of the printed government publication as one of many products for our customers.

In contrast, the advent of NTIS' new *World News Connection* is a completely different matter. Even under Executive Order A-130, I would argue that this brand new product should never have been developed. But certainly that should have been the case after passage of PRA in the spring of 1995. WNC is precisely the type of significant modification in product that triggers the public notification provisions contained in 44 USC 3506(d).

Unlike its printed predecessor, WNC is a fairly sophisticated, electronic product designed for wide distribution, and it contains the same information as is found in a number of current private sector products, including NewsBank's. The Director of NTIS has stated that translation costs for the foreign news sources are at least partially subsidized by the taxpayer through the intelligence agencies -- a significant capital savings to NTIS which no private sector provider can match. Add to that a marketing campaign with the name of a federal agency behind it, and you can see where NTIS can have a potentially enormous impact on the market.

The agency conducted focus groups to design and test the product and placed statements in the old, printed product to the effect that it intended to discontinue publication. However, NTIS did not take great efforts to give public notice about its plans for the new electronic WNC. IIA has not been able to determine that any comments were solicited, except perhaps as part of the agency's product design discussions. If NTIS followed the important mandate in PRA that government assess private sector dissemination activities, I would say they did so only to determine whether they could capture a profitable market share.

We have tried many avenues, working alone and with our colleagues at IIA, to resolve this issue with NTIS. I regret to report that no progress has been made. *World News Connection* is on the market, and harm has been incurred by NewsBank. Some of our customers have already canceled subscriptions to NewsBank services that WNC duplicates, and others have failed to renew subscriptions to similar NewsBank services while they review the NTIS product. If this trend continues, NewsBank may be forced to stop investing in some of our information products, and as many as five percent of my employees may lose their jobs.

Because most of us in the private sector have built our businesses and our reputations on the entrepreneurial spirit, we will survive this first shock of unfair government competition, but not unscathed. However, that may not always be the case. Unless strong enforcement of PRA is forthcoming, NTIS and other government agencies will continue to test the market with new products or new enhancements to current

products that clearly go beyond the bounds of the balance that the Act seeks to achieve. The first result will be a weakened private sector information industry, but the longer term consequences for commerce and the maintenance of a free society should not, and cannot, be ignored.

Next Steps in Effective Dissemination of Executive Branch Information

NewsBank's experiences with *World News Connection* are doubly relevant to today's hearing, Mr. Chairman. First, as an agency that is acting increasingly as a third-party disseminator of executive branch information, NTIS has demonstrated the dangers that lie in not strictly enforcing PRA principles all along the chain of information dissemination by the government. In contrast to NTIS, IIA has found GPO to be a responsible third-party disseminator of executive branch information. However, there is no guarantee that in a rapidly changing information marketplace, tomorrow's GPO may not be pressured to act more like a competitor than a provider, nor that agencies will use GPO to avoid the mandates of the Act. One certain way to avoid the problem is to apply the sound information dissemination principles of PRA to GPO.

The second relevant issue that arises from NewsBank's experience with NTIS is that two years after passage, PRA has not yet proven fully effective. Many of our fellow IIA members have witnessed a number of proposed or implemented actions by federal agencies that show clear ignorance, or defiance, of the mandates of the Act.

The Association's initial and continued support of PRA is rooted in the understanding that Congress meant PRA to achieve a proper balance between the roles of the public and private sector in disseminating executive branch information. On the one hand, the Act reinforces the obligations of federal agencies to provide government information to the public. The other part of the balance, however, is that agencies act responsibly and that they meet public needs without undue expenditures of time, money and effort. Congress recognized in PRA that a vibrant private sector was a necessary, established and vital part of the American system of disseminating government information. That is precisely why the Act contains such clear language cautioning against government activities that threaten the private sector.

Yet my experiences with NTIS on behalf of NewsBank, and the experiences of other members of IIA with NTIS and other agencies, leads industry to believe passage of the PRA was not enough. The problems encountered since 1995, however, are not without solution.

IIA would urge this Subcommittee -- and Congress in general -- to insist on strict adherence to and enforcement of all provisions in PRA. Without congressional involvement now, the information industry fears that the benefits of the dissemination policies envisioned by this Subcommittee in crafting the original legislation will never be fully realized.

IIA would respectfully suggest that the Subcommittee review how many agencies have yet to appoint or empower the requisite, qualified information officers called for under the Act. In addition, IIA is unaware that OIRA has undertaken any significant efforts to educate agency officials about the specific requirements under 44 USC 3506(d), and we would request that Congress look into this matter, as well. Although I cannot personally speak to other, specific instances, IIA would be glad to provide further information to the Subcommittee about other problems that have arisen because agencies have not complied with the information dissemination provisions of PRA.

The information industry does not make this request lightly, but only after attempts to deal directly with OIRA and several agencies have proven unsatisfactory. There appears to be a general lack of enthusiasm for PRA within the executive branch that only congressional intervention may help overcome. Few agencies appear to recognize that they have any obligations under this statute, other than to produce as much information in as many formats as possible, regardless of user needs and marketplace realities. Such a trend, if left unchecked, threatens potentially much of the commerce that relies on the unfettered flow of government information. Equally important, it will eventually hamper citizens' ability to choose from a diversity of providers to obtain information by and about their government -- a result with unmistakably grim consequences.

Conclusion

In closing, Mr. Chairman, I want to express again my appreciation to you and the Subcommittee for the opportunity to appear today. The issues involved in establishing sound executive branch information policies, whether in relation to GPO or the agencies that originate the data, are of the greatest importance to the information industry, including NewsBank. The Committee's interest and leadership in this area of the law is unparalleled, and this Subcommittee inquiry could not come at a more appropriate time.

IIA encourages you to go forward with this effort and build upon your work in helping craft the *Paperwork Reduction Act of 1995*. That Act contains important provisions to assure that Americans continue to enjoy a wealth of diverse and reliable information sources by and about their government. But until PRA is clearly understood and enforced, its goals may never be realized.

NewsBank's experiences with NTIS and the *World News Connection* have convinced me of that fact, and I join with other members of IIA in stating our willingness to work with the Subcommittee in assuring that the dissemination of executive branch information is undertaken in a responsible manner.

I will be pleased to answer any questions.

Mr. HORN. Well, we thank you. That's a very interesting story, and we will followup on that and see if that publication is in line with the mission of the agency. It seems to me, if they are into generalized aspects that aren't, as you suggest, in their scientific-technical role, I don't know what justification they can have for it, other than to make a couple of bucks.

[The information referred to follows:]

Mr. Horn raises a very important point here regarding the mission of the National Technical Information Service (NTIS).

NTIS was created and exists today strictly to collect and disseminate scientific, technical and engineering information ("STEI") which is generated by various federal government agencies. In effect, NTIS acts as a central repository for such information, which is originally collected by the agencies using taxpayer dollars in order to fulfill the essential dissemination responsibilities which are a part of those agencies' missions.

The governing statute that provided NTIS with this special role for STEI is the American Technology Preeminence Act ("ATPA" P.L. 102-245). By mandating that all federal agencies transfer to NTIS all STEI that results from federally funded research and development ATPA sought to increase American participation in technology development.

The mandate for transfer of STEI was intended to allow NTIS to become an efficient service for providing information to the American people in order to aid the drive for increased American competitiveness. However, in a business-like effort to expand its inventory to make it more attractive to potential users, NTIS has adopted a very broad, 1954 Comptroller General's Opinion regarding the definition of "technical information." This broad definition, which was nearly 40 years old when the ATPA was adopted, creates a situation whereby the originating agencies are transferring whole classes of information to NTIS for dissemination and in some cases then refusing to provide it directly to users. In so doing, NTIS, rather than fulfilling the crucial role of granting wider access to scientific, technical and engineering information, has undertaken steps that serve in some instances to forestall broad dissemination of this material. In other instances -- like the World News Connection -- the agency has extended its reach far beyond its mission to unnecessarily duplicate the dissemination efforts of the private sector.

The lack of a sharply-focused statutory definition has also resulted in NTIS' duplication of existing government information collection and dissemination efforts -- namely those of the Government Printing Office ("GPO"). This is precisely why Congress, as a condition of granting NTIS an FY 1995 appropriation, tasked NTIS with working with GPO to eliminate this duplication.

Mr. JONES. That, and in addition, it's not Government information.

Mr. HORN. Yes. That's right. So have you ever found where they have copied stories out of your own publication and just put it in theirs?

Mr. JONES. No. They buy their information from the same suppliers of information that we do, exactly the same ones, and other companies in our industry also provide the same information and have for many years.

Mr. HORN. OK. We will look into that case. It's very interesting.

Mr. JONES. Thank you.

Mr. HORN. The next presenter is Robert L. Oakley, the Washington Affairs representative of the American Association of Law Libraries, appearing on behalf of a coalition of library associations. And you are the law librarian at Georgetown. Welcome.

Mr. OAKLEY. That's right, Mr. Chairman. Thank you very much. I am honored to be here today representing a coalition of about 80,000 members of six national library associations.

I would like to request that our longer written statement be added to the public record of this hearing.

Mr. HORN. Yes, all of those are automatic, the minute we introduce you.

Mr. OAKLEY. Thank you, Mr. Chairman.

Our statement covers three broad areas. First, we describe the library participation in the Federal Depository Library Program and the partnership role that these libraries play to make significant investment and provide the public with timely, no-fee, convenient access to Government information that they need in order to serve the needs of their users, in print and electronic formats.

Second, our statement highlights the challenges and the opportunities presented by new technologies, about which we have spent much time this morning, and the need for central coordination to ensure that the life cycle of electronic Government information, from creation to preservation and archiving, is ensured.

There must be a comprehensive, coordinated program to ensure permanent public access. We believe this is a natural and important extension of the public dissemination role of the Superintendent of Documents. Valuable Federal information disappears daily from the growing number of agency Web sites.

Third, our statement discusses trends toward decentralization, privatization, and commercialization of Government information which, along with the increased use of electronic technologies to produce and disseminate information, have led to the growing crisis of Government information eluding the depository library program and therefore being less available to the public. The result is increased fugitive information and reduced public access, which we have talked about this morning.

Our statement lists a number of specific publications that have eluded the depository library program. It also notes agencies, such as the National Technical Information Service and the National Library of Medicine, that currently do not provide access to their data bases for no-fee public access in depository libraries. We believe that information created at Government expense rightfully belongs in the Federal Depository Library Program.

Mr. Chairman, we appreciate the opportunity to be here, and I want to summarize five additional issues that are addressed in our written testimony.

First, the Depository Library Program is the most efficient system to provide the American public with Government information, and libraries have invested a great deal to provide the technological infrastructure necessary to help meet the information needs of their users in this electronic age.

Second, there is a strong need for a central coordinating authority whose functions should include the development of much needed finding tools and the setting of standards for preservation and permanent public access to Government information.

Third, some agencies, as we have heard this morning, currently do not fulfill their responsibilities under Title 44, thereby depriving Americans of information created at taxpayer expense.

Fourth, Congress should provide a meaningful method of enforcement so that agencies will understand their obligations under Title 44 and will comply with the law.

Fifth, moving to a "cybergovernment" is replete with challenges and requires additional costs, both for the Government to produce and disseminate information and, in addition, for libraries and citizens to be able to locate and use it.

Mr. Chairman, we appreciate the opportunity to appear before you today, and we would be pleased to answer any questions you might have.

[The prepared statement of Mr. Oakley follows:]

Statement of
Robert L. Oakley
Director of the Law Library and Professor of Law
Georgetown University Law Center
Edward B. Williams Law Library

on behalf of the
American Association of Law Libraries
American Library Association
Association of Research Libraries
Chief Officers of State Library Agencies
Special Libraries Association
Urban Libraries Council

before the House Subcommittee on
Government Management, Information and Technology
Committee on Government Reform and Oversight

on the Government Printing Office and
Executive Branch Information Dissemination

May 8, 1997

Good morning. I am Robert L. Oakley, Director of the Law Library and Professor of Law at the Georgetown University Law Center. Today I am testifying on behalf of the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, the Chief Officers of State Library Agencies, the Special Libraries Association, and the Urban Libraries Council. Together, we represent more than 80,000 librarians, information specialists, library trustees, friends of libraries, and their institutions--all dedicated to public access to information. Our members know first-hand, on a daily basis, the importance and impact that government information has on the health and lives of all Americans, on the economic well-being of our nation and on the preservation of our democracy.

Chairman Horn and members of the Subcommittee, I am honored to appear before you today as you consider ways to improve public access to government information. The use of new technologies is rapidly changing the way that Congress, government agencies, and the courts create and provide access to information. While these are very exciting times in many ways, our steadfast goal is to use technology to improve and enhance public access to government information. We in the library community are very concerned that especially during these transitional years, models are developing that result in a loss to the public of information already created at taxpayer expense. It is imperative that agencies fulfill their responsibilities under the provisions of Title 44 and that both the spirit and the letter of the law are met.

The library community is an active partner in the current policy discussions on how to use new technologies to enhance citizen access to government information. Representatives from many of our associations participated in last year's congressionally-mandated study by the Government Printing Office (GPO). The final report to Congress provides a framework for access to electronic government information through the Federal Depository Library Program (FDLP). We urge this Subcommittee to reaffirm the basic principles that have guided this partnership program successfully for more than one hundred years. These principles, most recently expressed in the GPO's *Study to Identify Measures Necessary for a Successful Transition to a More Electronic Federal Depository Library Program* (June 1996), are as follows:

Principle 1: The Public Has the Right of Access to Government Information.

Principle 2: The Government Has an Obligation to Disseminate and Provide Broad Public Access to its Information.

Principle 3: The Government Has an Obligation to Guarantee the Authenticity and Integrity of its Information.

Principle 4: The Government Has an Obligation to Preserve Its Information.

Principle 5: Government Information Created or Compiled by Government Employees or at Government Expense Should Remain in the Public Domain.

The public's access to government information and the future success of the FDLP will be achieved only if agencies within all three branches of government, as creators and disseminators of information, staunchly uphold these principles. Mr. Chairman, other findings of the GPO study, particularly the case studies relating to problems with the dissemination of information by executive branch agencies (GPO Study Task Force Reports, Attachment D), should prove very useful to this Subcommittee as you investigate this issue.

Mr. Chairman, our testimony today covers three areas. **First**, we focus on the partnership role of federal depository libraries in providing the public--your constituents--with timely, no fee, convenient access to the information they need. **Second**, we highlight the challenges and opportunities presented by new technologies, especially the need to recognize the entire life cycle of government information, from creation to preservation. And **third**, we discuss erosion of the public's access to government information and the need for agency compliance with the provisions of Title 44.

Part I: Equitable Public Access to Government Information Through Depository Libraries

Public access to government information is a basic right of the American people which we believe the government has an affirmative obligation to provide. From the earliest days of our nation's history, Congress recognized its responsibility to inform the

American public of the work of the federal government, and established the Federal Depository Library Program to provide no-fee, geographically-dispersed access to government publications. By designating depository libraries in each state and congressional district, Congress ensured that government information from all three branches would be distributed throughout the country and available at no charge to the user. This system reflected a commitment to broad-based democracy and public accountability--principles that are as important today as they have been in the past. All Americans, whether in rural or urban communities and regardless of their economic status, must have equitable, ready, and timely access to government information. The FDLP meets this goal and is one of the most effective and successful partnerships between the Federal government and the library community.

Today, approximately 1,370 depository libraries located in nearly every congressional district provide expert service in helping your constituents locate and use government information within the constraints of rapidly changing technologies. These libraries invest a significant level of institutional funds for staff, space, and equipment to provide the public with ready, efficient and no-fee access to government information. Moreover, depository libraries are at the forefront in providing access to the broad and growing array of electronic government information products and services--which require a further investment in equipment, software, network development and support, additional technical staff, increased costs for training, and greater service requirements to instruct and assist library users.

Your constituents, whose tax dollars fund the collection and dissemination of information from agencies in all three branches of government, use the resources of their local depository library daily to access needed information. The results of GPO's most recent Biennial Survey reported that in 1995, an estimated 189,000 to 237,000 users each week were provided assistance in locating and using depository materials. These numbers represent people from all walks of life and all levels of experience and technical sophistication. Without the local resources and services provided at depository libraries, many of these requests for government information would go unmet.

Significant Investment of Depository Library Partners

Mr. Chairman, in preparation for this hearing, we contacted the Regional Depository Library in California for some recent statistics. The Government Publications Section of the California State Library (CSL) in Sacramento has over 2.8 million federal documents in its collection. During 1996-97, users asked more than 18,000 questions relating to this collection--half of these through telephone inquiries. In addition to this high level of reference service, 56,433 items from this collection were used in the library or borrowed during a twelve-month period, and another 5,376 titles were loaned to other libraries.

The total 1996-97 budget of the CSL Government Publications Section was approximately \$809,900, including all personnel costs and administrative overhead. Of this amount, \$89,000 was spent for purchasing materials such as indexes and other reference sources that are necessary to support the collection. The California State Library, serving over one hundred selective depository libraries, is one of fifty-three regional libraries that assumes the responsibility of collecting all materials available through the FDLP and for preserving them for permanent public access.

Across the country, depository libraries in every state are expending similar proportions of their budgets to support the FDLP, exemplifying their institutional commitment to providing the public access to government information. In February of this year, I appeared before the House Subcommittee on Legislative Appropriations to urge full support for the Public Printer's appropriations request of \$30,477,000 for the Superintendent of Documents Salaries and Expenses, of which \$25,886,000 will maintain the FDLP in FY 1998. When you consider the California State Library's annual costs of being a regional depository library, multiplied by the costs of the other fifty-two Regional depository libraries and more than 1,300 selective depository libraries, you recognize the significant investment that depository libraries make to participate in this partnership program. It is therefore incumbent upon the federal government to ensure that the system in place to deliver this information is efficient, comprehensive, and maximizes the investment of all program partners, including the taxpayer.

User Needs for Both Print and Electronic Formats

As professionals working in institutions dedicated to the importance of information and open access, librarians are uniquely situated to see the daily, real-life impact of rapidly changing technologies. In our role as intermediaries for the public, we are in the best position to recognize that government-wide policy decisions must be put into place now to manage these changes. Our experience shows that, as the average user requires assistance in navigating through the complex layers of technology and the confusing maze of government to find needed information, the role of depository libraries and librarians is more important than ever before. Depository libraries serve as the local link to government information in all formats, assisting the public and the federal government by providing the space, equipment, networks, training, professional assistance and user support necessary to connect people to the government information they require.

Depository libraries have built rich collections of print materials that will continue to serve the research and education needs of Americans for generations to come. These collections include important historical materials, such as the bound *Congressional Record*, older decennial Census reports, and the decisions of the U.S. Supreme Court. These rich historical collections--many of which are more than one hundred years old--represent the working

history of our nation and are heavily used by citizens in every state. It is important to recognize that, while more and more of today's information is available only in electronic formats, libraries must continue to maintain these print collections even as they plan for a more electronic Federal Depository Library Program.

One of the greatest strengths of depository libraries is that they are the nexus where the requirements to access all formats of government information come together to meet the needs of the users. Whether it is a 19th century congressional report from the *U.S. Congressional Serial Set* or the Department of Commerce's most recent trade statistics from the Internet, users are assured that their local depository library will have access to the resources they need and will provide the personal assistance they require.

Mr. Chairman, the library community is concerned that, in the rush to use new technologies, the historical record of key government resources--including historically significant congressional titles--is jeopardized by the discontinuation of print formats in favor of only electronic distribution. Last year's FY 1997 Legislative Branch Appropriations Act limited the distribution of the *U.S. Congressional Serial Set* to only one depository library in each state and eliminated the bound *Congressional Record* altogether. We have long recommended that format decisions be based on the value and usability of the materials, and not solely on cost concerns.

In neither case has a proven, comprehensive, permanent electronic replacement been developed that ensures long-term public access with the ability to migrate from one technological platform to another. We consider these titles among the core documents of our democracy and vital to the public's right to know. Electronic formats such as CD-ROM currently fail to meet the necessary standards to ensure permanent long-term access and preservation, nor are they the official, authoritative versions (Attachment 2, *Scientific American* article). The American Library Association (ALA) and the American Association of Law Libraries (AALL) have formally expressed concern with the impact of this decision on long-term public access. (Attachment 3, AALL Resolution).

Examples of FDLP Innovative Electronic Services

In addition to the traditional role of acquiring and maintaining print collections, libraries are also seizing opportunities afforded by new technologies. Depository libraries have long been on the leading edge of technological change and have adapted to their new role of electronic access providers by developing a range of innovative services which improve the public's use of these new formats. I'd like to briefly illustrate some of the ways in which depository librarians are contributing to the FDLP by highlighting three projects.

First is the unique "Uncle Sam Migrating Government Publications" (<http://www.lib.memphis.edu/gpo/mig.htm>) service developed by the

Regional Depository Library at the University of Memphis. This site tracks over 500 titles which in the past have been available to depository libraries in paper but which are now available only through the Internet. Librarians are grappling with the problems of how to ensure the continuing availability of these electronic titles. Many choose to download and retain their own copies, just like a print series would be bound and added to the collection, until the government establishes a comprehensive program for permanent public access.

Second, the "U.S. Federal Government Agencies Page" (<http://www.lib.lsu.edu/gov/fedgov.html>) hosted by the Regional depository library at Louisiana State University (LSU). This "mega-site" provides hotlinks to government agency Web sites based on the arrangement of the *United States Government Manual*. On a single day last week, there were 1,502 hits on this page.

Third, the "Infomine Project--Government Information" (<http://logic17.ucr.edu/govpub/>) site hosted by the University of California Riverside Library. Infomine is a catalog of universal resource locators (URLs) that includes both agency homepages and individual titles available on the Internet. It allows searching by title, subject, or keyword. The records for the Government Information section of Infomine result from the cooperative work of the government information librarians throughout the University of California system. There are currently over 2,400 URLs in the Government Information Section, and in March 1997 over 100,000 searches were performed.

Mr. Chairman, in addition to contacting California's Regional depository library to illustrate for you both the valuable services it provides and the significant costs it incurs to serve the public, we also spoke with the staff at the California State University (CSU) Long Beach Library. The library became a selective depository library in 1962, and today receives about 38% of the total items offered for selection through the FDLP. The library serves not only residents of its own congressional district, but borders Orange County so patrons from many different locations come to CSU to use the library's FDLP resources.

Currently, the library has one public access computer workstation dedicated to electronic government information products, and therefore meets the minimum technical guidelines for depository libraries. The many new challenges that all libraries face in providing access to electronic information are particularly hard on smaller institutions such as CSU-Long Beach.

Electronic government information is in high demand at CSU-Long Beach, so the depository collection--like that of other program libraries--includes several hundred CD-ROMs to date. Providing services for these CD-ROMs is problematic. Software for only 10% of the depository CD-ROMs has been loaded on the single workstation available for government documents, stretching the limits of this machine. The other 90% of the CD-ROMs are available for loan to

users, but not all patrons have the type of computer necessary to run these products. The library staff report a number of software compatibility problems; for example, some of the older CD-ROMS won't run in the current Windows environment.

Smaller depository libraries often lack sufficient staffing to be able to provide the extensive additional support that electronic services require. Practically every CD-ROM has its own search and retrieval software. Staff do not have the time to load, experiment with, and become expert with so many different systems. While the electronic capabilities and degree of service provided by selective depository libraries--particularly smaller ones--vary, all libraries and users would benefit greatly from much-needed standards and support services for agency produced electronic government information products.

Many of the complex issues regarding the government's use of electronic information dissemination technologies were thoroughly examined in the GPO study. Attachment 4 to this statement is a letter from our associations to the Public Printer outlining the concerns of the library community during the transition to a more electronic-based FDLP. Our two most critical concerns are the public's ability to locate information in a distributed electronic environment and the fundamental need to guarantee that electronic government information will be permanently accessible. It is critically important that there is a strong, centralized, coordinated, and managed federal information dissemination and access program.

Part II: Electronic Access to Government Information--Challenges and Opportunities

Need for a Strong, Centralized, Coordinated Program

We commend the Government Printing Office for the steady progress it has achieved in moving towards a more electronic FDLP. The development of the GPO Access system is laudable in terms of both increased public use and the growing number of electronic information products that are now available at no charge to the user. With the passage of the GPO Electronic Information Access Enhancement Act of 1993 (Public Law 103-40), Congress wisely sought to develop a central access point to information from all three branches of government. Recent usage statistics of the GPO Access system are impressive, as is its expansion to include more than 70 databases. In March 1997, over 4 million documents were downloaded from GPO Access.

With the rapid and pervasive growth of electronic government information, one of the greatest challenges for users is simply identifying and locating the database or source that they need. GPO's Superintendent of Documents Web site provides centralized bibliographic access to government resources in all formats through the online *Monthly Catalog*. GPO has developed an electronic Pathway Indexer that links users to information resources at over

1,274 other federal agency Web sites and indexes over 112,000 pages. In addition, GPO maintains a centralized database that allows users to search through the Government Information Locator Service (GILS) records of twenty-six federal agencies. Users have commended GPO's GILS database for providing a single point of access to these agencies' GILS records.

The assumption by some policy makers that there is no need for central coordination of the Federal Depository Library Program in a distributed electronic environment is simply not accurate. In fact, a more electronic FDLP requires greater coordination to bring all participants together on issues such as:

- ♦ standards and guidelines for locator systems to ensure ease of identifying and finding information;
- ♦ preservation and long-term access;
- ♦ no-fee depository library access to government information, including fee-based products and services in all formats; and,
- ♦ availability of government information in formats that are usable by the public.

The complexities of these issues and the need for central coordination, particularly when many agencies are creating their own Web sites, seem to be underestimated. Depository libraries and users today must deal with a vast and rapidly growing number of online publishing entities in a distributed electronic system. The administrative burden and inefficiencies of having nearly 1,400 libraries and thousands of citizens contacting each agency individually for materials and support would be enormous. Efficient and effective access to government information can only be achieved through a system of centrally coordinated access and dissemination services.

Need for Preservation and Permanent Public Access

It is critical that the law recognize the responsibility of the federal government to provide for permanent public access to government information in all formats through a comprehensively coordinated program that includes the Superintendent of Documents, federal agencies, the National Archives and Records Administration, the Library of Congress and other national libraries, depository libraries, and other library partners. This responsibility should be established within the Superintendent of Documents and is a natural and important extension of the public dissemination role of the Superintendent of Documents as administrator of the Federal Depository Library Program.

In the print world, this responsibility is being met successfully by the system of Regional depository libraries. As cultural institutions dedicated to public access, libraries are proven and effective partners in providing broad public access to physical collections. Whether these materials are printed publications or

tangible electronic products like CD-ROMs, there are tremendous advantages to having multiple, geographically dispersed collections of government information located around the country for the public to use.

In the electronic world as well, libraries again provide an invaluable service by supplying the local infrastructure--including hardware, software, training, expertise, and other services--necessary to effectively connect users to electronic resources. But physical custody of the electronic databases remains with the government, not libraries. In an electronic environment, the only partner in a position to assure preservation and ongoing access to government information is the federal government itself.

The traditional role of the Superintendent of Documents has been to provide permanent public access to print, microfiche, and tangible electronic products through the system of Regional depository libraries (44 U.S.C. 1912). We believe that this responsibility should be extended in the online environment to include ready, permanent public access to remotely accessible electronic products.

The GPO "Strategic Plan" envisions providing permanent public access to electronic government information through the development of a coordinated plan that includes:

- ♦ preserving and providing continuous, transparent access to all electronic files on the GPO Access system;
- ♦ ensuring that government information located at Federal agency Web sites is accessible through the GPO Pathway Indexer and is permanently available to the public; and
- ♦ establishing partnerships with depository libraries and other institutions willing to serve as partners for permanent public access.

GPO recently established the first FDLP library partnership which was signed in a three-way memorandum of understanding (MOU) by the GPO, the U.S. Department of State, and the Richard J. Daley Library at the University of Illinois, Chicago (UIC). Under the MOU, information products made available on the Department of State's main Web site, DOSFAN (Department of State Foreign Affairs Network), will migrate to a DOSFAN Electronic Research Collection when removed from the main Web site.

UIC will manage the DOSFAN Electronic Research Collection as an FDLP partner. Stipulations in the MOU require that UIC will: first, provide adequate online access to this research collection; second, ensure the security of the collection through mechanisms such as a fire wall; third, post notification that the collection is being maintained in partnership with the FDLP; fourth and most

importantly, provide a copy of all DOSFAN Electronic Research Collection files to GPO should UIC no longer be able to support permanent access to the files.

This last requirement ensures ongoing access to the collection either through GPO or through a subsequent FDLF partner. The MOU also stipulates that both the Department of State and GPO will post notification on their Web sites that the research collection is being provided in partnership with the FDLF, UIC, and DOS. In addition, GPO is required to provide bibliographic access to the electronic products housed in the collection. Operational details of this partnership are currently being worked out for June implementation. The library community is pleased with this model that provides a centrally coordinated program to ensure permanent public access.

Need for Guidelines for Agency Web Sites

With the emergence of the World Wide Web, federal agencies are quickly embracing these exciting technologies to disseminate government information. Yet we have several concerns regarding agency World Wide Web practices that require the attention and guidance of the Administration.

First, there appears to be little recognition that information and data disseminated through a government Web site are federal records and public information. There should be guidelines to ensure that this information is preserved and available even after its current use.

Second and equally problematic, librarians and users are seeing valuable government information resources made available through agency Web sites disappear daily. In the absence of a coordinated national program to systematically capture, preserve, and maintain ongoing access to electronic government data, important information is lost everyday as files come and go from agency web sites and computer servers. The information then becomes useless to the American public whose tax dollars have supported its creation.

Third, some of these sites offer what we refer to as "info-entertainment" and seem to be little more than a public affairs initiative to promote the agency. While it is important that a Web site include the agency's mission and organization, the meaningful content that librarians and users rely on to meet their information needs is often lacking. Some agencies, particularly those who rely on interaction with the public as part of their mission, such as the Federal Communications Commission, have developed Web sites more rich in content.

Fourth, we must develop mechanisms to ensure the authority and integrity of information available on agency Web sites. Users must be assured that the information they locate is, in fact, official. The Office of Management and Budget clearly recognizes this shortcoming as it offers the following caveat on its Web site:

"Electronic versions of OMB documents are intended to provide broad public access to the text of OMB directives and other key information. These electronic versions should not, however, be treated as authoritative. The only official versions of these documents are printed or hard copy materials obtained from the White House Publications Office or from official OMB sources."

In fact, the printed official versions of OMB documents are not available to the public at depository libraries. On the other hand, the Office of Federal Register stipulates that the electronic PDF files available from GPO Access do serve as the official versions of the *Federal Register* and the *Code of Federal Regulations*.

There are complex implementation challenges and significant costs ahead, particularly in terms of long-term access and preservation of government information that is available only through electronic formats such as agency Web sites. The GPO has been innovative in helping users locate information on Web sites by developing its electronic Pathway Indexer and its centralized GILS database. No entity of government, however, has established the systematic and comprehensive means for ensuring the preservation and permanent public access of electronic government information. We believe that this function should rest with the Superintendent of Documents as an extension of its duties to oversee and maintain the FDLP.

Part III: Erosion of Federal Government Information from the Public Domain

Less Access to Less Government Information

On February 27, 1997 Senator John Warner articulated his concern about "The Growing Crisis in Public Access to Public Information." (143 *Congressional Record* S1730). Increasingly, federal agencies are circumventing their obligations under Title 44. The trends toward decentralization, privatization, and commercialization of government information and the increased use of electronic technologies to produce and disseminate information have led to a large amount of government information eluding the primary systems of public access. The result is increased "fugitive" information and reduced public access.

Librarians and users alike are increasingly frustrated by the steady removal of important government resources from the public domain. The information needs of the American public are not served when agencies contract with private publishers and fail to supply these resources to the Superintendent of Documents for distribution to depository libraries. Broad access and use of publicly-funded information are substantially impaired when

licensing agreements prevent or curtail redissemination, or when agencies copyright or restrict distribution of information.

These developments have exposed serious flaws in the current laws and policies of the federal government. There is no comprehensive plan to ensure the life cycle of government information in an electronic environment. There is no effective enforcement or compliance mechanism to assure that agencies comply with their responsibilities under Title 44.

Agency Dissemination Initiatives that Circumvent Title 44

To illustrate the problems mentioned above, I'd like to highlight some different scenarios that librarians have witnessed:

- ◆ Publications that simply disappear from the FDLP because they are no longer published by the government and are now produced by the private sector using government data. A few recent examples are *Significant Features of Fiscal Federalism*, *Handbook of Labor Statistics*, and *Business Statistics of the United States*.

- ◆ Publications that agencies make available for a fee through the Internet that are excluded from the FDLP. For example, depository libraries can select the *National Criminal Justice Reference Service CD-ROM* for their collections but have to pay subscription costs for access to the Internet database that contains the actual reports.

- ◆ Publications which have been published by GPO and available to the FDLP in the past, but for which an agency enters into an exclusive contract, such as a Cooperative Research and Development Agreement (CRADA), with a private publisher. Examples of this are the *Journal of the National Cancer Institute* (now published by Oxford University Press) and the *U.S. Industrial Outlook* (McGraw Hill). Two titles which previously fell into this category, *Big Emerging Markets* (Bernan) and *The Hispanics-Latinos: Diverse People in a Multicultural Society* (Philip Morris and the National Association of Hispanic Publications), were subsequently made available to depository libraries because of congressional attention to this issue.

- ◆ Publications that have been produced in paper for years but now are published only electronically and are not being made available to depository libraries. Sometimes this results when an agency fails to realize that their full responsibilities under Title 44 include the provision of electronic products and services to depository libraries. Other cases occur when agencies license proprietary software to use with a product, such as for the *NTIS Order Now CD-ROM*, and there is no agreement on how the licensing fee for depository access should be recovered.

- ◆ Another scenario is when agency CD-ROMs or Web sites are available to depository libraries, but their use is restricted to only one password that must serve the needs of thousands of people

in the congressional district. The Department of Commerce's *STAT-USA* is an example of an information service created by an agency that operates under a cost-recovery mandate. Depository libraries are limited to one password to *STAT-USA*, a valuable database that contains literally thousands of titles that are no longer available in print. Institutions that need to network this product to provide adequate access to their users must pay for additional passwords.

♦ Finally some agencies, such as the National Technical Information Service (NTIS) and the National Library of Medicine (NLM), currently do not provide access to their databases for no-fee use in depository libraries. We believe that this information, created at taxpayer expense, rightfully belongs in the Federal Depository Library Program.

Compliance with Title 44 Needed Now

The library community has long maintained that there should be a strong enforcement mechanism and appropriate penalties for agencies that fail to comply with the provisions of Title 44. Government information created at taxpayer expense should remain in the public domain and be permanently available at no fee through depository libraries. The Government Printing Office and the Superintendent of Documents have no effective means for enforcing the FDLP provisions of Title 44 to ensure public access. OMB's Office of Information and Regulatory Affairs (OIRA), while responsible for developing information policy for executive branch agencies, has lacked the resources to ensure agency compliance with Title 44.

While the strongest incentive for an agency to disseminate information is to inform the taxpayer of the vital work which the agency performs, dissemination of information is rarely an explicit part of an agency's mission. There should be a balance between incentives and enforcement to ensure agency participation and compliance so that information created at taxpayer expense remains in the public domain and permanently available. We in the library community share the deep concern of members of Congress over the general lack of agency compliance with Title 44 and the negative impact this has on the public's ability to access government information.

Access America and the Federal Depository Library Program

Vice-President Al Gore recently released a new National Performance Review report on the reengineering of information technology, *Access America* (<http://www.gits.fed.gov/htmtxt/intro.htm>). We agree with the report's assertion that technology is dramatically changing the way the federal government provides services to all Americans. However, it is unfortunate that the vision embraced in this document ignores the successful, well-established infrastructure that provides citizens with no-fee access to government information within their own community--at their local depository library.

The report also assumes that government information disseminated through the Internet is readily and easily available in many households. Our experience underscores the fact that, while this is a laudable vision, it does not reflect the reality today. The report notes that in 1994, 72 percent of adults aged 16 and older living in the U.S. did not have access to the Internet at home, work or school. Even for those who do have personal computers and Internet access, the task of locating, retrieving, and using electronic government information remains a challenge for most Americans.

In focusing on how to improve access to government "services," *Access America* does not recognize fully the value of government information "content." We would like to see a commitment by the Administration to public access to government information, and a recognition of existing laws and policies that safeguard the public's right to government information.

Part IV: Summary and Conclusion

Mr. Chairman, thank you for this opportunity to appear before the Subcommittee this morning on behalf of our national library associations. Our members are in the unique position of being able to speak for the millions of American who each year visit their local depository library to find government information. Because of the increasingly complex maze of electronic government information, depository libraries are more valuable than ever before in meeting the needs of the public.

Allow me to summarize for you and the members of this Subcommittee the major issues addressed in our testimony today.

First, that the Federal Depository Library Program is the most efficient system to provide the American public with government information, and that libraries provide the national technological infrastructure that is necessary in the electronic age.

Second, that there is a strong need for a central, coordinating authority whose functions should include the development of much-needed finding tools, and the preservation and permanent public access of government information.

Third, that some agencies currently do not fulfill their responsibilities under Title 44, thereby depriving Americans of information created at taxpayer expense.

Fourth, that Congress should provide a meaningful method of enforcement so that agencies will understand their obligations under Title 44 and will comply with the law.

Fifth, that moving to a "cybergovernment" is replete with new challenges, and requires additional costs both for the government to produce and disseminate information, and for libraries and citizens to be able to locate and use it.

The associations that I am representing here today consider the problems of access to government information so pressing that in January we formed an Inter-Association Working Group on Government Information Policy. This group has begun identifying key issues that need to be addressed by legislation. Our draft working document, *Goals for Revising U.S.C. Title 44 to Enhance Public Access to Federal Government Information*, is attached. Also attached for your information is a document that identifies the essential components for enhanced public access to government information, and the responsibilities of all partners in the life cycle of government information (Attachments 5 and 6).

In closing, we believe that Congress, the Administration, and the courts should use electronic technologies to enhance the public's access to government information, not to diminish it. The channels of public access to government information must remain open, efficient, and technologically relevant. Libraries and your constituents are doing their part by investing in technologies to assist them in accessing electronic information. The federal government must fulfill its part of the partnership by investing in systems and services that provide the public with government information, and by assuring that valuable information created today will be preserved for future generations.

Attachments:

- 1) Organizational biographies.
- 2) *Scientific American* article regarding archiving electronic files, "Ensuring the Longevity of Digital Documents," (January 1995).
- 3) AALL Resolution on the U.S. Congressional Serial Set and the Bound Congressional Record.
- 4) Joint library association letter to the Public Printer on draft *Study to Identify Measures Necessary for a Successful Transition to a More Electronic Federal Depository Library Program* (April 25, 1996).
- 5) *Goals for Revising U.S.C. Title 44 to Enhance Public Access to Federal Government Information*, Draft Working Document prepared by the Inter-Association Working Group on Government Information Policy (April 1997).
- 6) *Enhanced Library Access and Dissemination of Federal Government Information: A Framework for Future Discussion*, Working Document of the American Association of Law Libraries, the American Library Association, the Association of Research Libraries, and the Special Libraries Association (June 26, 1995).

ORGANIZATIONAL BIOGRAPHIES

AMERICAN ASSOCIATION OF LAW LIBRARIES (AALL)

The American Association of Law Libraries is a nonprofit educational organization with over 5,000 members nationwide. Our members respond to the legal and governmental information needs of legislators, judges, and other public officials at all levels of government, corporations and small businesses, law professors and students, attorneys, and members of the general public.

AMERICAN LIBRARY ASSOCIATION (ALA)

The American Library Association is a nonprofit educational organization of 58,000 librarians, library educators, information specialists, library trustees, and friends of libraries representing public, school, academic, state, and specialized libraries dedicated to the improvement of library and information services. A new five-year initiative, ALA Goal 2000, aims to have ALA and librarianship be as closely associated with the public's right to a free and open information society--intellectual participation--as it is with the idea of intellectual freedom.

ASSOCIATION OF RESEARCH LIBRARIES (ARL)

The Association of Research Libraries is a not-for-profit organization representing 120 research libraries in the United States and Canada. Its mission is to identify and influence forces affecting the future of research libraries in the process of scholarly communication. ARL programs and services promote equitable access to, and effective use of, recorded knowledge in support of teaching, research, scholarship, and community service.

CHIEF OFFICERS OF STATE LIBRARY AGENCIES (COSLA)

The Chief Officers of State Library Agencies is an independent organization of the chief officers of state and territorial agencies designated as the state library administrative agency and responsible for statewide library development. Its purpose is to identify and address issues of common concern and national interest; to further state library agency relationships with federal government and national organizations; and to initiate cooperative action for the improvement of library services to the people of the United States.

SPECIAL LIBRARIES ASSOCIATION (SLA)

The Special Libraries Association is an international professional association serving more than 14,000 members of the information profession, including special librarians, information managers, brokers, and consultants. The Association has 56 regional/state chapters in the U.S., Canada, Europe, and the Arabian Gulf States and 28 divisions representing subject interests or specializations. Special libraries/information centers can be found in organizations with specialized or focused information needs, such as corporations, law firms, news organizations, government agencies, associations, colleges, museums, and hospitals.

URBAN LIBRARIES COUNCIL

The Urban Libraries Council (ULC) is an association of large public libraries and corporations which serve them, organized to solve common problems, better understand new opportunities, and conduct applied research which improves professional practice. Full membership in ULC is open to public libraries in metropolitan areas, and to the corporations which serve them. Current library members (115+) provide public library services to over half the population of the United States.

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Ensuring the Longevity of Digital Documents

The digital medium is replacing paper in a dramatic record-keeping revolution. But such documents may be lost unless we act now

by Jeff Rothenberg

The year is 2045, and my grandchildren (as yet unborn) are exploring the attic of my house (as yet unbought). They find a letter dated 1995 and a CD-ROM. The letter says the disk contains a document that provides the key to obtaining my fortune (as yet unearned). My grandchildren are understandably excited, but they have never before seen a CD—except in old movies. Even if they can find a suitable disk drive, how will they run the software necessary to interpret what is on the disk? How can they read my obsolete digital document?

This imaginary scenario reveals some fundamental problems with digital documents. Without the explanatory letter, my grandchildren would have no reason to think the disk in my attic was worth deciphering. The letter possesses the enviable quality of being readable with no machinery, tools or special knowledge beyond that of English. Because digital information can be copied and recopied perfectly, it is often extolled for its supposed longevity. The truth, however, is that because of changing hardware and software, only the letter will be immediately intelligible 50 years from now.

Information technology is revolutionizing our concept of record keeping in an upheaval as great as the introduction of printing, if not of writing itself. The current generation of digital records has unique historical significance. Yet these

documents are far more fragile than paper, placing the chronicle of our entire period in jeopardy.

My concern is not unjustified. There have already been several potential disasters. A 1990 House of Representatives report describes the narrow escape of the 1960 U.S. Census data. The tabulations were originally stored on tapes that became obsolete faster than expected as revised recording formats supplanted existing ones (although most of the information was successfully transferred to newer media). The report notes other close calls as well, involving tapes of the Department of Health and Human Services; files from the National Commission on Marijuana and Drug Abuse, the Public Land Law Review Commission and other agencies; the Combat Area Casualty file containing P.O.W. and M.I.A. records for the Vietnam War; and herbicide information needed to analyze the impact of Agent Orange. Scientific data are in similar jeopardy, as irreplaceable records of numerous experiments conducted by the National Aeronautics and Space Administration and other organizations age into oblivion.

So far the undisputed losses are few. But the significance of many digital documents—those we consider too unimportant to archive—may become apparent only long after they become unreadable. Unfortunately, many of the traditional methods developed for ar-

chiving printed matter are not applicable to electronic files. The content and historical value of thousands of records, databases and personal documents may be irretrievably lost to future generations if we do not take steps to preserve them now.

From Here to Eternity

Although digital information is theoretically invulnerable to the ravages of time, the physical media on which it is stored are far from eternal. If the optical CD in my attic were a magnetic disk, attempting to read it would probably be futile. Stray magnetic fields, oxidation and material decay can easily erase such disks. The contents of most digital media evaporate long before words written on high-quality paper. They often become unusably obsolete even sooner, as media are superseded by new, incompatible formats—how many readers remember eight-inch floppy disks? It is only slightly facetious to say that digital information lasts forever—or five years, whichever comes first.

Yet neither the physical fragility of digital media nor their lemminglike tendency toward obsolescence constitutes the worst of my grandchildren's problems. My progeny must not only extract the content of the disk but must also interpret it correctly. To understand their predicament, we need to examine the nature of digital storage. Digital infor-

mation can be saved on any medium that is able to represent the binary digits ("bits") 0 and 1. We will call an intended, meaningful sequence of bits, with no intervening spaces, punctuation or formatting, a bit stream.

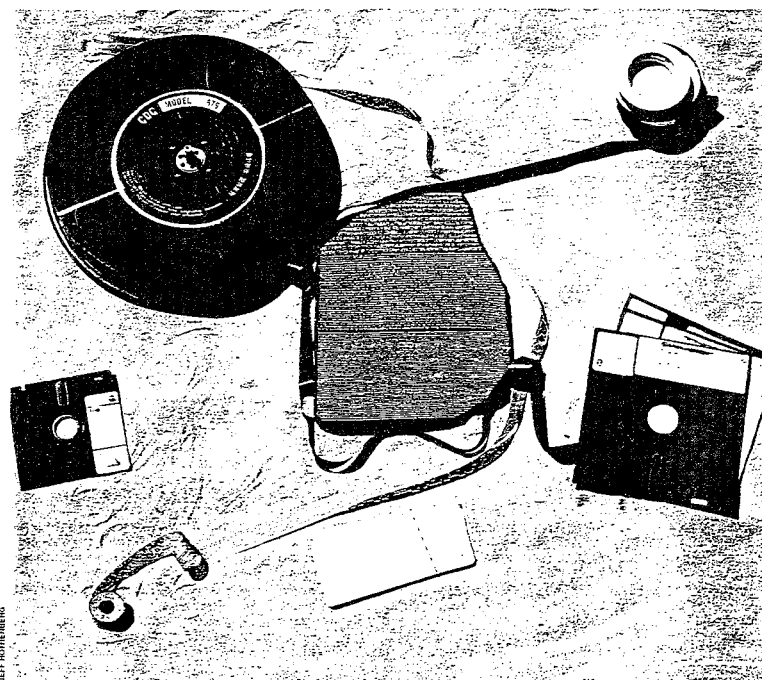
Retrieving a bit stream requires a hardware device, such as a disk drive, and special circuitry for reading the physical representation of the bits from the medium. Accessing the device from a given computer also requires a "driver" program. After the bit stream is retrieved, it must still be interpreted. This task is not straightforward, because a given bit stream can represent almost anything—from a sequence of integers

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to an array of dots in a pointillist-style image.

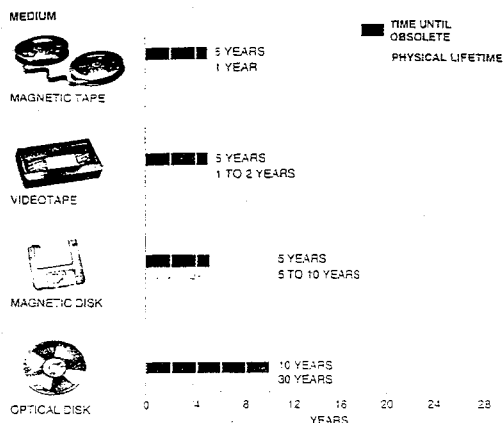
Furthermore, interpreting a bit stream depends on understanding its implicit structure, which cannot explicitly be represented in the stream. A bit stream that represents a sequence of alphabet-

ic characters may consist of fixed-length chunks ("bytes"), each representing a code for a single character. For instance, in one current scheme, the eight bits 01110001 stand for the letter q. To extract the bytes from the bit stream, thereby "parsing" the stream into its



OBSOLESCENCE plagues digital media. Those shown have already failed to remain readable for one hundredth the time that the Rosetta Stone has. The classical Greek script in the stone, which was found in 1799 in Egypt by a French military

demolition squad, made hieroglyphics and demotic Egyptian comprehensible. Besides being legible after 22 centuries, the Rosetta Stone (a replica here) owes its preservation to the visual impact of its content—an attribute absent in digital media.



EXPECTED LIFETIMES of common digital storage media are estimated conservatively to guarantee that none of the data are lost. (Analog tapes, such as those used for audio recordings, remain playable for many years because they record more robust signals that degrade more gradually.) The estimated time to obsolescence for each medium refers to a particular recording format.

components, we must know the length of a byte.

One way to convey the length is to encode a "key" at the beginning of the bit stream. But this key must itself be represented by a byte of some length. A reader therefore needs another key to understand the first one. Computer scientists call the solution to such a recursive problem a "bootstrap" (from the fanciful image of pulling oneself up by the bootstraps). In this case, a bootstrap must provide some context, which humans can read, that explains how to interpret the digital storage medium. For my grandchildren, the letter accompanying the disk serves this role.

After a bit stream is correctly parsed, we face another recursive problem. A byte can represent a number or an alphabetic character according to a code. To interpret such bytes, therefore, we need to know their coding scheme. But if we try to identify this scheme by inserting a code identifier in the bit stream itself, we will need another code identifier to interpret the first one. Again, human-readable context must serve as a bootstrap.

Even more problematic, bit streams may also contain complex cross-referencing information. The stream is often stored as a collection, or file, of bits that contains logically related but physi-

cally separate elements. These elements are linked to one another by internal references, which consist of pointers to other elements or of patterns to be matched. (Printed documents exhibit similar schemes, in which page numbers serve as pointers.)

Interpreting a Bit Stream

Suppose my grandchildren manage to read the bit stream from the CD-ROM. Only then will they face their real challenge: interpreting the information embedded in the bit stream. Most files contain information that is meaningful solely to the software that created them. Word-processing files embed format instructions describing typography, layout and structure (titles, chapters and so on). Spreadsheet files embed formulas relating their cells. So-called hypermedia files contain information identifying and linking text, graphics, sound and temporal data.

For convenience, we call such embedded information—and all other aspects of a bit stream's representation, including byte length, character code and structure—the encoding of a document file. These files are essentially programs: instructions and data that can be interpreted only by appropriate software. A file is not a document in its own right—

it merely describes a document that comes into existence when the file is interpreted by the program that produced it. Without this program (or equivalent software), the document is a cryptic hostage of its own encoding.

Trial-and-error might decode the intended text if the document is a simple sequence of characters. But if it is complex, such a brute-force approach is unlikely to succeed. The meaning of a file is not inherent in the bits themselves, any more than the meaning of this sentence is inherent in its words. To understand any document, we must know what its content signifies in the language of its intended reader. Unfortunately, the intended reader of a document file is a program. Documents such as multimedia presentations are impossible to read without appropriate software: unlike printed words, they cannot just be "held up to the light."

Is it necessary to run the specific program that created a document? In some cases, similar software may at least partially be able to interpret the file. Still, it is naive to think that the encoding of any document—however natural it seems to us—will remain readable by future software for very long. Information technology continually creates new schemes, which often abandon their predecessors instead of subsuming them.

A good example of this phenomenon occurs in word processing. Most such programs allow writers to save their work as simple text, using the current seven-bit American Standard Code for Information Interchange (or ASCII). Such text would be relatively easy to decode in the future if seven-bit ASCII remains the text standard of choice. Yet ASCII is by no means the only popular text standard, and there are proposals to extend it to a 16-bit code (to encompass non-English alphabets). Future readers may therefore not be able to guess the correct text standard. To complicate matters, authors rarely save their work as pure text. As Avra Michelson, then at the National Archives, and I pointed out in 1992, authors often format digital documents quite early in the writing process and add figures and footnotes to provide more readable and complete drafts.

If "reading" a document means simply extracting its content—without its original form—then we may not need to run the original software. But content can be lost in subtle ways. Translating word-processing formats, for instance, often displaces or eliminates headings, captions or footnotes. Is this merely a loss of structure, or does it impinge on content? If we transform a spreadsheet into a table, deleting the formulas that

relate the table's entries to one another, have we affected content? Suppose the CD in my attic contains a treasure map depicted by the visual patterns of word and line spacings in my original digital version of this article. Because these patterns are artifacts of the formatting algorithms of my software, they will be visible only when the digital version is viewed using my original program. If we need to view a complex document as its author viewed it, we have little choice but to run the software that generated it.

What chance will my grandchildren have of finding that software 50 years from now? If I include a copy of the program on the CD, they must still find the operating system software that allows the program to run on some computer. Storing a copy of the operating system on the CD may help, but the computer hardware required to run it will have long since become obsolete. What kind of digital Rosetta Stone can I leave to provide the key to understanding the contents of my disk?

Migrating Bits

To prevent digital documents from being lost, we must first preserve their bit streams. That means copying the bits onto new forms of media to ensure their accessibility. The approach is analogous to preserving text, which must be transcribed periodically. Both activities require ongoing effort: future access depends on an unbroken chain of such migrations frequent enough to prevent media from becoming physically unreadable or obsolete before they are copied. A single break in this chain renders digital information inaccessible, short of heroic effort. Given the current lack of permanence of media and the rate at which their forms evolve, migration may need to be as frequent as once every few years. Conservative estimates suggest that data on digital magnetic tape should be copied

SHAKESPEARE'S

Though yet heaven knows it is but as a tombe
Which hides your life, and shewes not halfe your parts:
If I could write the beauty of your eyes,
And in fresh numbers number all your graces,
The age to come would say this Poet lies,
Such heavenly touches are toucht earthly faces.
So should my papers (yellowed with their age)
Be scorn'd, like old men of less truth then tongue,
And your true rights be term'd a Poets rage,
And stretcht miter of an Antique song.
But were some child of yours alive that time,
You should live twife in it, and in my rime.

18.

Shall I compare thee to a Summers day?
Thou art more lovely and more temperate:
Rough winds do shake the darling buds of May,
And Summers lease hath all too short a date:
Sometime too hot the eye of heaven shines,
And often is his gold complexion dimm'd,
By chance, or natures changing course untrim'd;
But thy eternal Summer shall not fade,
Nor loose possession of that faire thou ow'st,
Nor shall death brag thou wand'st in his shade,
When in eternal lines to time thou grow'st,
So long as men can breathe or eyes can see,
So long lives this, and this gives life to thee.

19

Devouring time blunt thou the Lyons pawes,
And make the earth devour her owne sweet brood,
Plucke the keene teeth from the fierce Tygers yawes,
And burne the long liu'd Phoenix in her blood,
Make glad and sorry seasons as thou fleet'st,
And do what ere thou wilt swift-footed time
To the wide world and all her fading sweets:
But I forbid thee one most hainous crime,
To the wide world and all her fading sweets:

SHAKESPEARE'S first printed edition of sonnet 18 (1609) exemplifies the longevity of the printed page: the words are legible after almost four centuries (the final couplet is especially relevant to preserving documents). But digital media can become unreadable within a decade.

once a year to guarantee that none of the information is lost. (Analog tapes may remain playable for many years because they record more robust signals that degrade more gradually.)

In the long run, we might be able to develop long-lived storage media, which would make migration less urgent. At the moment, media with increased longevity are not on the horizon. Nevertheless, the cost of migration may eventually force the development of such products, overriding our appetite for improved performance.

An ancient text can be preserved either by translating it into a modern language or by copying it in its original dialect. Translation is attractive because it avoids the need to retain knowledge

of the text's original language, yet few scholars would praise their predecessors for taking this approach. Not only does translation lose information, it also makes it impossible to determine what information has been lost, because the original is discarded. (In extreme cases, translation can completely undermine content: imagine blindly translating both languages in a bilingual dictionary into a third language.) Conversely, copying text in its original language (saving the bit stream) guarantees that nothing will be lost. Of course, this approach assumes that knowledge of the original language is retained.

Archivists have identified two analogous strategies for preserving digital documents. The first is to translate them into standard forms that are independent of any computer system. The second approach is to extend the longevity of computer systems and their original software to keep documents readable. Unfortunately, both strategies have serious shortcomings.

On the surface, it appears preferable to translate digital documents into standard forms that would remain readable in the future, obviating the need to run obsolete

software. Proponents of this approach offer the relational database (introduced in the 1970s by E. F. Codd, now at Codd & Date, Inc., in San Jose, Calif.) as a paradigmatic example. Such a database consists of tables representing relations among entities. A database of employees might contain a table having columns for employee names and their departments. A second table in the database might have department names in its first column, department sizes in its second column and the name of the department head in a third. The relational model defines a set of formal operations that make it possible to combine the relations in these tables—for example, to find the name of an employee's department head.

Select entries from a checking account statement.

DATE	CHECK/DEPOSIT	AMOUNT	BALANCE
4/5/94	DEPOSIT	\$500.00	\$500.00
4/26/94	DEPOSIT	\$1,000.00	\$1,500.00
4/27/94	CHECK #314	\$250.00	\$1,250.00
11/3/94	DEPOSIT	\$100.00	\$1,350.00
	CHECK #315		\$1,350.00

Remove all spaces and punctuation; translate dates into six digits (mmddyy), check numbers into four digits, deposits into "0000" and dollars amounts into 11 digits.

[illegible]

Concatenate these entries to produce a decimal digit stream.

```
0405940000000000500000000050000042694031400000
0100000000004000004279400000000005000000000450
0011039403150000001000000000035000
```

UNDERSTANDING A BIT STREAM demands knowledge of the format used to create the stream. If all the numbers in a monthly checking account statement were strung together—with nothing to distinguish check numbers, dates and dollar amounts—the resulting sequence of digits would be impossible to understand.

Because all relational database systems implement this same underlying model, any such database can in principle be translated into a standard tabular form acceptable to any other system. Files represented this way could be copied to new media as necessary, and the standard would ensure readability forever.

is, the database could not immediately make it clear that a corporation consisted of one headquarters, five national offices, 25 divisions and 100 departments. Various object-oriented database models (which can represent structure directly) are evolving to satisfy this need. Such rapid evolution is neither accidental nor undesirable. It is the hallmark of information technology.

Furthermore, far from being a representative example, relational databases are practically unique. No other type of digital document has nearly so formal a basis for standardization. Word processors, graphics programs, spreadsheets and hypermedia programs each create far more varied documents. The incompatibility of word-processing files exemplifies this problem. It did not arise simply because companies were trying to distinguish their products in the marketplace. Rather it is a direct outgrowth of the technology's tendency to adapt

Flaws of Translation

Regrettably, this approach is flawed in two fundamental ways. First, relational databases are less standardized than they appear. Commercial relational database systems distinguish themselves from one another by offering features that extend the relational model in nonstandard ways. Moreover, the limitations of such databases are already leading to the adoption of new models. The tables in a relational database cannot transparently show structure. That

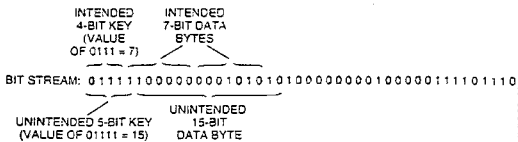
itself to the emerging needs of users.

As yet, no common application is ready to be standardized. We do not have an accepted, formal understanding of the ways that humans manipulate information. It is therefore premature to attempt to enumerate the most important kinds of digital applications, let alone to circumscribe their capabilities through standards. Forcing users to accept the limitations imposed by such standards or restricting all digital documents to contain nothing but text as a kind of common denominator would be like forcing the digital revolution to give its momentum to a society from the attraction of new capabilities. Defining long-term standards for digital documents may become feasible when information science rests on a more formal foundation, but such standards do not yet offer a solution.

Translating a document into successive short-term standards offers false hope. Successive translation avoids the need for ultimate standards, but each translation introduces new losses. Would a modern version of Homer's *Iliad* have the same literary impact if it had been translated through a series of intermediate languages rather than from the earliest surviving texts in ancient Greek? In theory, translating a document through a sequence of standards should enable scholars to reconstruct the original document. Yet that requires each translation to be reversible without loss, which is rarely the case.

Finally, translation suffers from a fatal flaw. Unlike English and ancient Greek, whose expressive power and semantics are roughly equivalent, digital documents are evolving so rapidly that shifts in the forms of documents must inevitably arise. New forms do not necessarily subsume their predecessors or provide compatibility with previous forms. Old documents cannot always be translated into unprecedented forms in meaningful ways, and translating a current file back into a previous form is frequently impossible. For example, many older, hierarchical databases were completely redesigned to fit the relational model, just as relational databases are now being restructured to fit emerging object-oriented models. Shifts of this kind make it difficult or meaningless to translate old documents into new standard forms.

The alternative to translating a digital document is to view it by using the program that produced it. In theory, we might not actually have to run this software. If we could describe its behavior in a way that does not depend on any particular computer system, future generations could re-create the behavior of



CODE KEY may be used to indicate how a bit stream is organized. Here the first four bits stand for the integer 7, meaning that the remaining bytes are each seven bits long. Yet there is no way to tell the length of the code key from the bit stream itself. If we were to read the first five bits as the code key, we would erroneously conclude that the remaining bytes were 15 bits long.

the software and thereby read the document. But information science cannot yet describe the behavior of software in sufficient depth for this approach to work, nor is it likely to be able to do so in the near future. To replicate the behavior of a program, there is currently little choice but to run it.

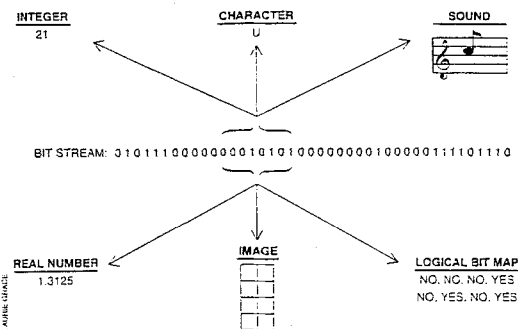
For this reason, we must save the programs that generate our digital documents, as well as all the system software required to run those programs. Although this task is monumental, it is theoretically feasible. Authors often include an appropriate application program and operating system to help recipients read a digital document. Some applications and system software may remain ubiquitous, so that authors would need only to refer readers to those programs. Free, public-domain software is already widely available on the Internet. Moreover, when proprietary programs become obsolete, their copyright restrictions may expire, making them available to future users.

How can we provide the hardware to run antiquated systems and application software? A number of specialized museums and "retro-computing" clubs are attempting to maintain computers in working condition after they become obsolete. Despite a certain undeniable charm born of its technological bravado, this method is ultimately futile. The cost of repairing or replacing worn out components (and retaining the expertise to do so) must inevitably outweigh the demand for any outmoded computer.

Fortunately, software engineers can write programs called emulators, which mimic the behavior of hardware. Assuming that computers will become far more powerful than they are today, they should be able to emulate obsolete systems on demand. The main drawback of emulation is that it requires detailed specifications for the outdated hardware. To be readable for posterity, these specifications must be saved in a digital form independent of any particular software, to prevent having to emulate one system to read the specifications needed to emulate another.

Saving Bits of History

If digital documents and their programs are to be saved, their migration must not modify their bit streams, because programs and their files can be corrupted by the slightest change. If such changes are unavoidable, they must be reversible without loss. Moreover, one must record enough detail about each transformation to allow reconstruction of the original encoding of the bit stream. Although bit streams



INTERPRETING A BIT STREAM correctly is impossible without contextual information. This eight-bit sequence can be interpreted in at least six different ways.

can be designed to be immune to any expected change, future migration may introduce unexpected alterations. For example, aggressive data compression may convert a bit stream into an approximation of itself, precluding a precise reconstruction of the original. Similarly, encryption makes it impossible to recover an original bit stream without the decryption key.

Ideally, bit streams should be sealed in virtual envelopes: the contents would be preserved verbatim, and contextual information associated with each envelope would describe those contents and their transformation history. This information must itself be stored digitally (to ensure its survival), but it must be encoded in a form that humans can read more simply than they can the bit stream itself, so that it can serve as a bootstrap. Therefore, we must adopt bootstrap standards for encoding con-

textual information: a simple, text-only standard should suffice. Whenever a bit stream is copied to new media, its associated context may be translated into an updated bootstrap standard. (Irreversible translation would be acceptable here, because only the semantic content of the original context need be retained.) These standards can also be used to encode the hardware specifications needed to construct emulators.

Where does this leave my grandchildren? If they are fortunate, their CD may still be readable by some existing disk drive, or they may be resourceful enough to construct one, using information in my letter. If I include all the relevant software on the disk, along with complete, easily decoded specifications for the required hardware, they should be able to generate an emulator to run the original software that will display my document. I wish them luck.

FURTHER READING

TEXT AND TECHNOLOGY: READING AND WRITING IN THE ELECTRONIC AGE. Jay David Bolter in *Library Resources and Technical Services*, Vol. 31, No. 1, pages 12-23; January-March 1987.

TAKING A BYTE OUT OF HISTORY: THE ARCHIVAL PRESERVATION OF FEDERAL COMPUTER RECORDS. Report 101-978 of the U.S. House of Representatives Committee on Government Operations, November 6, 1990.

ARCHIVAL MANAGEMENT OF ELECTRONIC RECORDS. Edited by David Bearman. Archives and Museum Informatics, Pittsburgh, 1991.

UNDERSTANDING ELECTRONIC INCUNABULA: A FRAMEWORK FOR RESEARCH ON

ELECTRONIC RECORDS. Margaret Hedstrom in *American Archivist*, Vol. 54, No. 3, pages 334-354; Summer 1991.

ARCHIVAL THEORY AND INFORMATION TECHNOLOGIES: THE IMPACT OF INFORMATION TECHNOLOGIES ON ARCHIVAL PRINCIPLES AND PRACTICES. Charles M. Dolla. Edited by Oddo Bucci. Information and Documentation Series No. 1. University of Macerata, Italy, 1992.

SCHOLARLY COMMUNICATION AND INFORMATION TECHNOLOGY: EXPLORING THE IMPACT OF CHANGES IN THE RESEARCH PROCESS ON ARCHIVES. Avia Michelson and Jeff Rothenberg in *American Archivist*, Vol. 53, No. 2, pages 236-315; Spring 1992.

Attachment 3

RESOLUTION ON THE U.S. CONGRESSIONAL SERIAL SET AND
THE BOUND CONGRESSIONAL RECORD

- WHEREAS, The *U. S. Congressional Serial Set* and the bound *Congressional Record* together comprise a significant portion of the official historical record of Congress; and
- WHEREAS, The *U. S. Congressional Serial Set* has been produced since 1813 in a bound, numbered edition, and includes Senate and House documents, congressional committee reports, presidential and other executive publications, treaty materials, and selected reports of nongovernmental organizations; and
- WHEREAS, The bound *Congressional Record* has been produced since 1873 as the official record of the proceedings and debates of Congress in a uniform, numbered edition, superseding its predecessors, the *Annals of Congress* (1789-1824), the *Register of Debates* (1824-1837), and the *Congressional Globe* (1833-1873); and
- WHEREAS, The *U.S. Congressional Serial Set* and the bound *Congressional Record* are important historical materials for the legal and research communities, particularly for the compilation of legislative histories needed to determine legislative intent in interpreting federal statutes; and
- WHEREAS, The *U.S. Congressional Serial Set* and the bound *Congressional Record* are available through the Federal Depository Library Program, providing ready no-fee access to the official version of these important titles in nearly every Congressional district; and
- WHEREAS, The *U.S. Congressional Serial Set* and the print bound *Congressional Record*, as official, authoritative records of the deliberations of Congress, are produced on acid free permanent paper to ensure their preservation for future research and scholarship; and
- WHEREAS, The production and dissemination of these historically-significant titles in microfiche, CD-ROM or other electronic formats do not at this time meet required standards to ensure permanent long-term access and preservation, nor are they the official, authoritative versions; now, therefore, be it

RESOLVED, That the American Association of Law Libraries urge Congress to continue to fund the production of the *U.S. Congressional Serial Set* and the bound *Congressional Record* in the permanent, print versions required for long-term access and preservation; and be it further

RESOLVED, That the American Association of Law Libraries urge Congress to recognize the historical significance of these print titles as the official record of their deliberations, and to guarantee their continued availability to the American public through local depository libraries; and be it further

RESOLVED, That the American Association of Law Libraries transmit a copy of this resolution to Members of the House and Senate Legislative Appropriations Subcommittees, to other appropriate congressional committees, and to the Public Printer.

Endorsed by the AALL Executive Board, July 19, 1996

Attachment 4

AMERICAN ASSOCIATION OF LAW LIBRARIES

WASHINGTON AFFAIRS REPRESENTATIVE



Robert L. Oakley
 Director of the Law Library & Professor of Law
 Georgetown University Law Center

April 26, 1996

Michael F. DiMario
 Public Printer
 U. S. Government Printing Office
 732 N. Capitol Street, N.W.
 Washington, D.C. 20401

Dear Mr. DiMario:

Thank you for this opportunity to respond to the recently released *Report to the Congress: Study to Identify Measures Necessary for a Successful Transition to a More Electronic Federal Depository Library Program*. We are responding to your request to submit written comments based on the oral remarks delivered at last week's joint meeting between members of the Working Group and the Advisors. Our comments today reflect the views of the members of the American Association of Law Libraries, the American Library Association, the Association of Research Libraries and the Special Libraries Association.

We are pleased that our associations, which represent more than 75,000 professionals in public, academic and special libraries throughout the country, were included in an advisory capacity during the lengthy study process. We commend the Government Printing Office for carrying out this legislatively-mandated study in a manner that considered the views of all three branches of the government, the library community and the private sector. It is especially noteworthy that members of the Working Group consisted of representatives from key agencies, including the National Archives and Records Administration (NARA), as well as many Congressional staff. It is hoped that one outcome of this collaborative approach will be improved understanding by all stakeholders of the serious issues of concern to libraries and other users of government information as the transition to a more electronic Federal Depository Library Program (FDLP) proceeds.

The FDLP has existed for one hundred and thirty-nine years as a very successful partnership program between the federal government, libraries and the public. This partnership must become even stronger in the future in order that the move to a more electronic program succeeds in reaching its goal: that is, the use of new technologies to expand the public's access to government information. We are pleased with the draft report's principles for federal government information, including the public's right to know and the government's responsibility to disseminate and provide broad and permanent access to its information. The well-articulated goals for an electronic FDLP, as noted in the draft report, must be realized to ensure that these important principles are achieved.

It is especially gratifying that many of the comments and concerns addressed in our previous joint letter to you regarding the Transition Plan were incorporated into the draft report. We do wish to offer some additional general comments on the draft study as there continue to be many areas of serious concern and importance to our members.

TIME FRAME: We are pleased that the draft report offers a more realistic and technologically feasible five to seven year time frame for the transition. The Transition Chronology proposed in the strategic plan better reflects the nation's technological infrastructure; the ability of agencies to create and provide access to information electronically; and the capabilities of libraries and users to effectively utilize such information. We will urge members of the Congressional authorizing and appropriating committees to support this more realistic time frame so that no barriers develop during the transitional years that would reduce the public's access to government information.

VIABILITY OF PRINT: We are pleased that the draft study recognizes the continued viability of a variety of formats, including print, to meet user needs. Format decisions should be based on usage, on the needs of the user community, and also on an agency's own dissemination requirements. While electronic information offers many advantages to paper, including timeliness, the ability to perform full-text searches and to manipulate data, certain types of materials will continue to be more efficiently created, disseminated and used in paper format.

Another problematic area regarding format decisions concerns fee-based products and services; namely, when an agency stops production of a title in print and moves it into a fee-based online service. One example of this is that depository libraries have in the past been able to select the FBIS and JPRS reports in print formats but these are now available online through paid subscriptions to the new World News Connection service of the National Technical Information Service (NTIS). It is planned that by the end of this year these important materials will be available only online while the printed and microfiche reports will be phased out. Valuable materials that have traditionally been available to depositories will no longer be included in the program since NTIS does not offer no-fee access to the World News Connection for depository libraries.

REDUNDANCY AND DIVERSITY: We are pleased that the draft study recognizes the principles of redundancy and diversity as articulated in NCLIS Principle #5: The Federal Government Should Ensure a Wide Diversity of Sources of Access, Private as Well as Governmental, to Public Information. Redundancy--in access, in formats, and in preservation--is both a necessity and an advantage. It provides a safeguard in case of overloaded systems, natural or man-made disasters, and even government shutdowns.

It is the government's affirmative obligation to ensure permanent access to the information that it produces. In the electronic environment, diverse and multiple partners are needed to promote and ensure access and preservation to government information long after its initial creation and dissemination. At the same time, a diversity of other public, private and not-for-profit sources is critical to ensuring that information remains available in useful and convenient ways.

CENTRALIZATION: We are pleased that the draft study recognizes the need for coordination and centralization to meet the goals of the FDLP. The program in a distributed electronic environment requires coordination to bring all participants together on issues of: 1) standardization and guidelines to ensure ease of locating information and guarantees of long-term access; 2) no-fee access to all government information, including fee-based products and services; and 3) usability. The complexities of these issues, particularly when many agencies are creating their own web sites, seems to be underestimated in the draft report. We commend GPO ACCESS as the legislatively-mandated centralized point of entry to electronic government information and the GPO locator service that assists the public in finding information across diverse government entities. Users must have timely and comprehensive finding aids to the growing vast universe of electronic government information, and centralized coordination is the most efficient means.

In addition to the above general comments on the draft study, we firmly believe that the study's goal of ensuring broader public access through electronic means will not be achieved unless the following concerns are addressed. While details of the draft study and the strategic plan remain to be worked out, these issues are critical to the transition's success. We hope also that the collaborative approach which GPO brought to the study itself will be maintained so that all interested and involved partners, including our associations, may continue to participate in the process.

MORE DATA NEEDED: We remain very concerned that although some useful information was gathered during the study process, neither the draft report, the models developed as part of the task force reports, nor the strategic plan are based on substantive data regarding costs to and capabilities of the government, libraries or the public to produce, access and use predominately electronic information. We believe that a technical scan is necessary and we will urge Congress to approve funding for the Technical Implementation Assistance which the report proposes.

NO-FEE ACCESS: We strongly support the study's first goal statement which ensures that the public has equitable, no-fee local access to government information through depository libraries. The draft study addresses this issue by suggesting that reimbursement to agencies for fee-based services could come from the Superintendent of Documents. There are no assurances, however, that there will be continued adequate funding to support the transition plan. Consequently, we are concerned that government information for which agencies must recover costs, particularly fee-based products and services, will become a new generation of fugitive information.

LONG-TERM PERMANENT ACCESS AND PRESERVATION: The draft report acknowledges that issues relating to long-term access and preservation of electronic government information require new relationships, indeed new strategies, between all stakeholders: GPO, agencies, NARA and participating libraries. Yet the draft fails to identify what these strategies may entail and the responsibilities for each partner. Long-term access and preservation issues are critical to the success of the FDLP; thus it is crucial that additional information regarding these activities be provided.

In addition, the draft report includes the recommendation that GPO will assume new responsibilities in the archival arena. Through many years of maintaining preservation and archival programs and collections, libraries have learned that these efforts require significant investments in technological solutions (e.g. deacidification and digitization pilots), personnel, and facilities. To be successful in undertaking new preservation and archiving responsibilities, GPO will need to provide additional detail regarding how such tasks will be accomplished. We suggest that a comprehensive study be undertaken among all partners to guarantee permanent long-term access and preservation. For example, it is not clear how and when GPO would support the "periodic review and refreshing of data to different mediums."

The issues of long-term permanent access and preservation are central to the transition to a more electronic program and thus we are especially concerned that the draft study offers no specifics, no data, no costs and no assurances. We reaffirm that these critical issues are the responsibility of the government and that they must be comprehensively addressed before the transition plan is implemented. The questions are very basic ones: first, how do we assure that electronic information will be available and usable next month, next year, or in twenty-five, fifty, or even a hundred years from now; and second, who will be responsible for ensuring long-term permanent access. In shifting long-term access from depository libraries to the government, as the draft study suggests, we must be assured that funding will remain adequate so that the government can refresh and migrate information. Otherwise, our national historical records will disappear into a black hole and the advantages of electronic information will be nullified.

COPYRIGHT-LIKE RESTRICTIONS: Principle 5 states that Government information created or compiled at Government expense or by Government employees as part of their official duties, regardless of the format in which it is published, is in the public domain. We strongly affirm this principle and note that some agencies are imposing copyright-like restrictions on electronic information. Worrisome patterns are already being proposed; for example, in the case of an agency restricting the downloading of information or its electronic re-transmission. This is an egregious barrier not only to the public's current and long term access to information but also to innovative and creative forces in the private sector to develop enhanced products and services. Further, regarding the proposal of the National Technical Information Service, libraries can neither restrict nor control users from placing electronic information on the Internet.

FEE-BASED PRODUCTS AND SERVICES: In order to fulfill the goals of an enhanced FDLP program, it is vital that materials not currently in the program, such as those created by self-supporting agencies who are by law required to recover their costs, be included. While the draft report proposes models through which these materials would enter the program, the key question is, of course, who is going to pay. GPO suggests that the Superintendent of Documents would reimburse agencies for the cost of including these products and services in the program. However, there are no guarantees that Congress would assure the necessary funding.

This issue addresses the troubling question of cost recovery and quasi-business corporations. Regarding the NTIS proposal for example, it is very troubling that libraries would be asked to become watchdogs to ensure that these electronic materials do not leak out into the public domain. We are also concerned that these or similar restrictions could potentially be used by agencies for access to services for which users have paid subscriptions. A strong affirmation

on redistribution without copyright-like restrictions for agency cost-recovery programs is imperative.

ROLE AND RESPONSIBILITIES OF PROGRAM LIBRARIES: We are concerned that since all depository libraries will soon be required to have Internet access and since, according to the plan, most government information will be available in electronic format, even the smallest program library will by default become a "regional" for electronic government information. Requiring all libraries to fulfill the regional depository libraries' statutory responsibilities of access and service will place undue burdens on selectives. In order to prevent this occurrence, more flexibility must be built into the program that allows libraries to provide access to electronic information in a manner they can accommodate. We must all acknowledge the tremendous value of program libraries and it is important to provide incentives for their continued participation in the program.

CONCLUSION:

These comments on the draft study and the strategic plan supplement our oral comments delivered at last week's joint Working Group and Advisors meeting. We will submit additional comments on the draft study and particularly on some of the specific Task Force Reports within the next few weeks. In particular, we are troubled that some proposed alternative models in several of the Task Force Reports may not be wholly in accord with the study's affirmed principles and goals and thus are very problematic to our members.

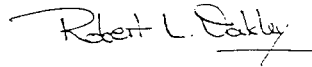
We are especially pleased to see the new draft language of the definitions in Chapter 19, Title 44 that acknowledge that electronic information is explicitly defined in the law as being a key component of the FDLP. It is crucial that Chapter 19 be amended to reflect these changes in definitions and the broader scope of the FDLP to assure that the goals for a more electronic program are achieved.

We believe that funding for the technology grants will provide seed money for small selective libraries which otherwise would be unable to provide access to electronic products and services to members of their local communities. One-time technology grants are a step in the right direction although they may not be sufficient since technology itself changes so rapidly as do user needs. To strengthen the justification for these technology grants, we suggest that GPO determine the number of libraries that would be unable to provide access to the expanding array of electronic FDLP materials without these start-up grants.

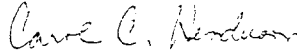
We would like to make the following recommendations: 1) that the substantial progress and inter-agency dialog achieved throughout the past year continue; 2) that GPO and agencies work together to determine consistency regarding format and standards; and 3) that the Working Group model continue with Information Resource Management representatives from GPO, the Library of Congress, the Office of Management and Budget, and the Administrative Office of the United States Courts, as well as the library community and users.

We remain concerned that the draft study lacks clear incentives for agencies to participate in the program, particularly when their budgets are being cut. We also firmly believe that means of oversight and compliance must be provided in a meaningful and effective way. Our associations, representing the broader library community, are willing to work with you to supplement and strengthen the study by offering additional information in the following areas: the capabilities of and impact on libraries and users; the role and responsibilities of regional and selective depository libraries; and the troublesome questions of oversight and compliance. Thank you very much for this opportunity to comment on the draft report.

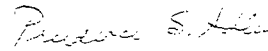
Sincerely,



Robert L. Oakley
Washington Affairs Representative
American Association of Law Libraries



Carol C. Henderson
Executive Director - Washington Office
American Library Association



Prudence S. Adler
Assistant Executive Director
Association of Research Libraries



David R. Bender
Executive Director
Special Libraries Association

cc: Members, House and Senate Legislative Appropriations Subcommittees
Chair and Ranking Minority Member, House and Senate Authorizing Committees
Ms. Linda Kemp, Staff Director, Joint Committee on Printing

DRAFT 4/11/97

GOALS FOR REVISING U.S.C. TITLE 44 TO ENHANCE PUBLIC ACCESS
TO FEDERAL GOVERNMENT INFORMATIONDeveloped by the Inter-Association Work Group on Government Information Policy
April 1997

Congress currently is examining ways to improve public access to government information and public accountability of government entities through revisions to Title 44 of the United States Code and other applicable statutes. We affirm that any changes to Title 44, the Federal Depository Library Program (FDLP), or federal government information policies must embrace fundamental principles of public access, and we recommend that the following goals be included in any reform effort:

GOAL 1: The law must broaden and enhance public access to all forms of government information.

PRINCIPLES:

- 1) The public has a right of access to government information.
- 2) In order to foster an informed citizenry capable of fully participating in our democratic process and provide for economic development, the public must be ensured easy and equitable access to federal government information from *all three branches* of government at no cost to the citizen.
- 3) In order to guarantee the availability of information to the public, the government should disseminate its information in usable formats to the public, libraries, and other information providers; and provide timely, equitable, effective, no-fee public access to its information through depository libraries.
- 4) Government information created or compiled by government or contractor employees or at government expense must remain in the public domain with no copyright-like restrictions.
- 5) The public's access to government information must not be denied or hindered by exclusive arrangements that apply copyright-like restrictions on the use or dissemination of government information.
- 6) All government information should be initially published by the government and made available with no restrictions to the public through libraries and other means. Republication of government information is the right of all citizens and no obstacles should be placed in the way of that right.

AREAS OF REFORM:

- a) Legislation should guarantee the public's fundamental right to government information. Providing for the dissemination and access to government information is an affirmative responsibility of every entity of the federal government.
- b) Legislation should provide for the availability or dissemination of information in the most appropriate format(s). The format of dissemination must take into account the use of the information and the reliability of the format over time.
- c) Legislation should provide for multiple formats for some types of government information in order to meet users' needs and ensure the integrity, long-term preservation and permanent public access to the information.

d) The definition of "government information" to be made available to the public and included in the depository program should include all information, regardless of form or format, which is created or compiled by employees of a component of the government, or at government expense, or as required by law, except that which is required for official use only, is for strictly administrative or operational purposes having no public interest or educational value, or is classified for reasons of national security.

e) The definition of "government information" under Title 44 should include information from all government agencies, military agencies, independent regulatory agencies, government corporations, government controlled corporations, or other establishments in the executive, legislative, or judicial branches of the federal government, as well as information created, compiled, or published under government contract.

f) Legislation should clarify the definition of "government information" to explicitly include electronic information products and services. The definition of government information must include the broadest possible array of publicly-funded information of public interest or educational value, and should not be limited to only those materials originally intended for public dissemination (e.g., sales publications, brochures).

g) Legislation should make it clear that agency information products and services, including those developed under a fee-based mandate or statute, must be made available to the public at no fee through depository libraries.

h) Legislation should ensure that access to government information is not hindered by exclusive arrangements that apply copyright-like restrictions on use or redissemination of government information.

i) Legislation should ensure that no-fee public access to government information is not diminished by the privatization or commercialization of government information. Information created or compiled at taxpayer expense should be made available to the public through depository libraries. In cases where government information is accessible only through government contracts with private commercial services, no-fee access to the public through depository libraries should be ensured.

j) Legislation should eliminate the exclusion for "cooperative publications" currently found in 44 U.S.C. 1903.

k) Legislation should ensure that government information created, compiled, or disseminated through contracts, cooperative research and development agreements, or other formal arrangements, must be available to the public at no fee through depository libraries.

GOAL 2: The law must resolve the constitutional or inter-branch issues regarding the oversight and administration of information creation, acquisition, production, bibliographic control, dissemination, and permanent public access in order to establish clear accountability and facilitate public access to government information from all three branches.

PRINCIPLES:

1) Congress must continue to effectively provide oversight in a manner that will ensure that all three branches of government comply with the principles of public access.

AREAS OF REFORM:

a) Legislation should provide for strong congressional oversight of government information policies and practices and the power to effect government-wide standards that facilitate public access.

b) Legislation should underscore Congress' role in providing public access to government information. As the branch of government closest to the people, Congress has a vested interest in ensuring nationwide local access to federal government information.

c) Legislation should provide enforceable compliance mechanisms for the procurement and production systems, and the public access and dissemination requirements of the law.

d) Enforcement authority should be established to cover all three branches of government.

e) Legislation should include incentives for agencies and libraries to participate in the depository program. Statutory authority should be provided to ensure agency compliance with laws and regulations regarding public access to government information, and agency participation in programs designed to facilitate and provide public access to government information.

GOAL 3: The law must strengthen the role of the Superintendent of Documents and the Federal Depository Library Program in providing public access to government information.

PRINCIPLES:

1) The government must provide a strong, centralized, coordinated and managed program that provides for the acquisition, bibliographic control, dissemination, and long-term public access of government information at no cost to the public through depository libraries.

2) The government must develop, adopt, and utilize government-wide standards for the production, dissemination, and access to government information in electronic format.

AREAS OF REFORM:

a) Legislation should strengthen the Federal Depository Library Program, the Superintendent of Documents Sales Program, and GPO Access as essential mechanisms for ensuring public access to government information. [To reflect the impact of electronic technologies on public access, the name of the FDLP should be changed to the "Federal Depository Library and Public Access Program."]

b) Legislation should provide for appropriations and the statutory basis for broad public access to government information. This includes the distribution of physical publications to depository libraries at no charge, and to all others at no more than the cost of distribution. Likewise, electronic access to government information should be provided at no fee to the broadest possible audience; in cases where access fees are required, no-fee access must be guaranteed to the public through depository libraries.

c) Legislation must make it clear that regardless of any other legal or administrative requirements, government information must be made accessible to the public through the FDLP; specifically, an agency's mandate to recover costs does not relieve it from fulfilling its depository (i.e., Title 44) obligations.

d) Library services included in the FDLP should span the entire life-cycle of government information and should include:

- cataloging and bibliographic control,
- administration of access to online electronic information products,
- distribution of physical publications and tangible electronic products,
- preservation and permanent public access,
- development of standards,
- providing training,
- facilitating feedback and participation in the design and evaluation of government information products and services,
- other services that enhance public access to government information.

These services should be centrally coordinated in order to facilitate public access and to most effectively meet the needs of libraries and the public.

e) The law must unequivocally state that electronic information must be made publicly available and included in the FDLP.

f) Adequate appropriations to the FDLP must be included to provide depository libraries with copies of publications and online access to databases. The Superintendent of Documents should be empowered to reimburse publishing agencies at the rider rate for depository copies of tangible products. Appropriations must cover the costs of producing and disseminating products through the FDLP as well as any costs for software licenses that accompany electronic products.

g) Legislation should provide for a centrally managed procurement and production system for government information products and services. Such a system should facilitate the identification of information products for inclusion in the FDLP. It is essential also that the system provide for appropriate penalties and enforcement power for non-compliance.

h) Legislation should require that each branch of government develop a standardized system in consultation with the national libraries and the judicial branch libraries to describe their electronic information products and services at the database level (e.g., GILS/Government Information Locator Service); these records should provide interactive links to online databases and information resources.

i) Legislation should provide for the utilization of advisory council(s) that include members from all three branches of government, librarians, and the public.

GOAL 4: The law must establish an affirmative responsibility of the federal government to preserve and provide permanent public access to its information, and to ensure the authenticity of government information.

PRINCIPLES:

1) The government has an affirmative obligation to guarantee: the authenticity and integrity of its information, the preservation of government information, and the permanent public access to government information.

AREAS OF REFORM:

a) Legislation should provide for the central coordination of permanent public access to government information. The federal government, including the Superintendent of Documents working in cooperation with the National Archives and Records Administration and publishing agencies, should be responsible for establishing and maintaining formal contracts and interagency agreements that ensure the

preservation and permanent public access to government information. Implementation of this should include a distributed system that provides for adequate redundancy and is based on official/contractual agreements between partners.

b) Legislation should account for the need of the public to be assured that the information that the government provides is authentic. Policies and practices should provide for "official" versions of government information on which the public can rely in conducting their business and affairs.

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Working Document prepared by the
Inter-Association Work Group on Government Information Policy
Draft 4/8/97

The Inter-Association Work Group on Government Information Policy is a cooperative team of representatives from seven major library associations working to enhance public access to government information through the revision of U.S.C. Title 44. Together, these associations represent more than 70,000 librarians, information specialists, library trustees, and others interested in library issues.

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ENHANCED LIBRARY ACCESS AND DISSEMINATION OF FEDERAL GOVERNMENT INFORMATION: A FRAMEWORK FOR FUTURE DISCUSSION

Toward that end, the library community identified several key elements fundamental to enhancing public access to government information. In addition, it has delineated the responsibilities of each partner in the life cycle of government information. Three essential components of this process were: 1) that the current information infrastructure already employs multiple channels for the dissemination of public information; 2) that for the past 100 years, the Government Printing Office has administered the Federal Depository Library Program (FDLP) and centrally coordinated the printing, procurement, and distribution of depository publications, including electronic products such as CD-ROM; and 3) that within the FDLP, participating libraries make significant contributions of staff and resources toward accessing and preserving Federal information.

MISSION STATEMENT FOR A FEDERAL DISSEMINATION AND ACCESS PROGRAM TO LIBRARIES AND THE PUBLIC

The mission for an enhanced Federal Information Dissemination and Access Program is to guarantee ready, equal, equitable, no-fee access to government information regardless of format to the people of the United States of America through participating libraries. Building on the success of the current FDLP, the nation must develop a broader Federal Information Dissemination and Access Program.

THE FUTURE OF FEDERAL GOVERNMENT INFORMATION

Electronic dissemination is an increasingly significant force in the future of Federal information dissemination and access. Electronic information offers opportunities to allow users, producers, and providers to inferact in radically different ways. For users, the response time between information request and delivery diminishes and the amount and variety of information products expands. For producers, broad and efficient dissemination may result in cost-savings and rapid feedback on information content, viability, and usability. With a diversity of governmental providers and delivery mechanisms, many users will be able to access information directly from the source they desire. At the same time, information producers will be able to disseminate information products more efficiently and at a lower cost. These developments will require a cooperative effort among all parties to ensure a successful transition to an electronic information environment.

Today, the Government Printing Office, the National Technical Information Service, the Library of Congress, and individual agencies share in the dissemination of electronic government information. The decentralized and transient nature of electronic information dissemination has resulted in a need for a "Central Authority" to coordinate and coordinate the multiple providers of government information products and services and to guarantee continued, equitable, no fee public access to government information. At the same time, it must be understood that government information still resides and will continue to be distributed in traditional print formats and that for many products print will remain the required format for use. The evolution to electronic formats will not happen overnight, and the need to access and archive 150 years of additional, print material will never disappear.

ESSENTIAL COMPONENTS OF AN ENHANCED FEDERAL INFORMATION AND ACCESS PROGRAM TO LIBRARIES AND THE PUBLIC

The evolution of the Federal Depository Library Program to an enhanced Federal Information Dissemination and Access Program (hereafter referred to as the Program) must be conducted in consultation with current Program participants, information users, and others including Congress, Federal agencies, libraries, library organizations, and the Depository Library Council to the Public Printer, and other appropriate groups.

- Provide for a system of equitable, effective, no fee, efficient, and dependable access/distribution of all formats of government information from all branches of government
- Provide for Congressional oversight responsibilities and the ability to enforce agency compliance with relevant laws, regulations, and policies
- Provide for a strong, centralized, coordinated, and managed Federal information dissemination and access program
- Provide for a system that includes Congressionally designated and/or by law depository and partner libraries which have agreed to provide access to federal government information
- Provide for balance between mobility and cost effectiveness for the public, for libraries, and for government agencies when determining appropriate formats for publishing and disseminating government information
- Provide for the inclusion in the Program of all appropriate government information publications and services from multiple distributors and partners, including but not limited to the Government Printing Office, the National Technical Information Service, the Library of Congress, and Federal Agencies
- Provide for funding the Program at the level necessary to comply with statutory requirements and to ensure its effectiveness and participation in the National Information Infrastructure

LIFE CYCLE OF GOVERNMENT INFORMATION

The various stages in the life cycle of government information provide the framework to examine the role of each Program participant in the Creation, Dissemination, Access, Use, Preservation, and Evaluation of government information. Each partner must accept and implement their respective responsibilities without regard to format. The following table provides an overview of the responsibilities of each partner in the government information life cycle.

Endorsed by: American Association of Law Libraries, American Library Association, Association of Research Libraries, Special Libraries Association

PARTNER RESPONSIBILITIES IN THE 1 3 CYCLE OF GOVERNMENT INFORMATION

	PRODUCING GOVERNMENT AGENCIES	CENTRAL OPERATIONAL AUTHORITY	PARTICIPATING LIBRARIES	USERS
CREATION	Create government information products in a timely and useful format and in consultation with other program partners	Facilitate communication in the design and development of information products and services	As intermediaries, partners in the design and development of information products and services facilitate user feedback	As primary clientele, partners in the design and development of information products and services
DISSEMINATION	Comply with 17 USC 105 Provide government information products and services through multi-faceted dissemination programs at no cost to the public through participating libraries	Distribute or coordinate the distribution of information products and services in a timely fashion Provide a variety of dissemination options and channels Identify, obtain, or provide access to government information products and services regardless of format	Work with other Program partners to disseminate government information through a variety of dissemination programs	Work with other Program partners to disseminate government information through a variety of channels and that it is appropriate to their needs
ACCESS	Release products and services in a timely and usable fashion Notify Program partners through the Central Authority about existing, planned, ongoing, or discontinued products and services Develop GILS and other products to help identify government information products and services	Develop catalogs, pathfinders, and other products to help identify government information products and services Establish standards and ensure Program compliance In sales program, charge no more than the cost of dissemination	Provide timely access to government information at the user's convenience regardless of their geographic location or ability to pay Share resources and information with other libraries, document delivery, reference assistance, and electronic networks Supplement distributed Program products with commercially produced indexes, publications, and equipment necessary to meet public needs	Open publicly supported government services and therefore must always have guaranteed access to them
USE	Provide documentation, software, technical support and user training	Distribute/coordinate access to government information to Program partners at no charge	As intermediaries, assist users in the identification, location, use and acquisition of government information regardless of format	Government information products and services must always be provided in usable format to the public
PRESERVATION	Cooperate with other Program participants to ensure all information products are archived, accessible, accurate and compatible with current and future technologies	Ensure that all information products are archived, accessible, accurate and compatible with current and future technologies	Cooperate with other Program participants to ensure that all information products are archived, accessible, accurate and compatible with current and future technologies	Must always have access to government information in well-maintained, accurate and accurate condition
EVALUATION	Solicit and consider input from Program partners in the evaluation of government information products and services	Provide avenues for the evaluation of the Program including advisory councils, Federal agencies, libraries, and the general public	Work with other Program partners to determine the success of the Program through formal and informal evaluation	Establish criteria and provide feedback to determine the success of the Program

Mr. HORN. Well, we thank you very much. You have a very full statement that I have read, and I think that's very helpful to the dialog.

Our last witness on this panel is Wendy Lechner, legislative director of the Printing Industries of America, Inc.

Ms. Lechner.

Ms. LECHNER. Thank you.

Mr. Chairman, members of the subcommittee, my name is Wendy Lechner. I am the legislative director of the Printing Industries of America. PIA is the Nation's largest graphic arts association, with 14,000 members. We appreciate the opportunity to testify.

I would like to say at the start that there is no printing job performed at GPO, or elsewhere in the Federal Government, that cannot be contracted out. Such privatization could be done without sacrificing timeliness, quality, or security. We are totally confident that such contracting out would also save the Government money.

Despite our belief that GPO can be closed and work contracted out, we do not believe it should be done without looking to the future. Congress needs to make a thorough evaluation of its printing, publishing, and information management needs, to ensure that it is getting the most bang for the buck and to ensure that the public has access to information produced with taxpayer funds.

At present, printing services are fragmented to the point where it is impossible to determine how much and what type of printing and publishing services are underway. As a result, the Government cannot plan how best to carry out its information dissemination needs, nor can it determine whether more cost-effective methods can be used in the future.

PIA has several recommendations to provide a road map to ensure that both the Government and the public are getting the information they want, in the formats that are most useful, for the best price, in terms of dollars and efficiency. My written testimony outlines these recommendations in more detail, but I would like to briefly highlight several of them.

First off, Congress should implement a strategic planning process to evaluate the printing, publishing, and information management needs of Congress and the public. It is Congress' responsibility to ensure that Government information is published and properly distributed. However, without a business plan that determines current and future needs, with respect to formats, quantity, equipment, and the like, Congress cannot possibly make sound decisions.

Second, Congress should implement appropriate controls over Federal agency activities in printing, publishing, and information dissemination to ensure that the public is informed. Over the decades, we sometimes seem to have forgotten that the primary mission of the Government Printing Office, as well as Federal agency printing plants, is to produce public information.

If Congress does not control the presses, or at least have a system of determining how public information is produced and disseminated, the public information network cannot properly function.

And last, every Federal agency should be required to submit an annual plan as part of its budget request. The plan should indicate

how the agency will fulfill its responsibilities to inform the public and how it intends to produce the work, whether in-house or by contract. If the work is to be performed in-house, the report should indicate the equipment required for the work and the cost of the work.

Currently, no one has information about printing or duplicating equipment or facilities owned by any Federal agency. However, since some have speculated that Federal printing and information expenditures may exceed \$3 billion, it would appear that significant budget savings may result if better information and management techniques were instituted.

In closing, I would like to point out that we continue to believe that the best way to provide information services is through the private sector. GPO has successfully operated a centralized procurement system that should continue to evolve and improve. Contracting out printing services works, both in terms of providing taxpayer-financed information to the public and in terms of cost savings to the Government.

Thank you for letting me testify today, and I would be happy to answer any questions.

[The prepared statement of Ms. Lechner follows:]

Mr. Chairman and members of the Subcommittee, my name is Wendy Lechner. I am the legislative director for the Printing Industries of America. PIA is the nation's largest graphic arts association with 14,000 members. We appreciate this opportunity to present our views on Title 44 and federal government printing.

We are aware that there are members of Congress who wish to close the Government Printing Office and those who would argue in favor of keeping it open. We wish to make it very clear from the beginning that there is no printing job performed at the Government Printing Office or elsewhere in the federal government that could not be contracted out to the private sector. Such privatization could be done without sacrificing timeliness, quality or security. We are totally confident that such contracting out would also save the government money. Frankly, Mr. Chairman, we have never understood why a government which can contract out complex weapons and computer systems for national defense and security cannot have confidence in its ability to contract out printing.

Despite our firm belief that the GPO can be closed and work contracted out, we do not believe the Congress should take such an action without a thorough evaluation of its printing needs and information plans for the future. In that regard, we wish to make some specific suggestions with regard to the Government Printing Office, government information, and federal government printing in general.

We recommend that the Congress produce a business plan of its printing, publishing and information needs

One of the problems associated with closing the Government Printing Office is that Congress has not evaluated what its future printing and publishing needs are. The purpose of the business plan would be to assess the needs of Congress to communicate internally and how Congress should work with the Executive Branch to assure the proper distribution of government information to the public. As an example, a decision by Congress to change the means of production of the Congressional Record and Federal Register from a printed product to an on-line product significantly changes the equipment needs of the GPO as well as the pre-press requirements to produce the publications. It is likely that an increase in the electronic production of these publications would result in a decrease in the print requirements. Such changes likely would change the equipment needs to produce congressional material. The plan's purpose would not be to analyze the efficiency of the GPO but to decide what are the mission requirements of the Congress. Since the Congress is basically producing material the same way it has for decades, a review of the mission is overdue. It is likely that one of the results of the study would be a recommendation that Congress does not need to print as much material as it currently prints. At the very least, the study would enable Congress to develop a plan for its future needs.

We recommend that the Congress implement some controls over federal agency activities in printing, publishing, and information dissemination to assure that the public is informed.

We often forget that the primary mission of the Government Printing Office, as well as federal agency printing plants, is to produce public information. Historically, the control of public information has been in the hands of the Congress since it is the body elected by the people. We believe the Congress cannot surrender this important link with the voters. Unfortunately, if the Congress does not control the presses or at least have a system of determining how public information is produced and disseminated, the public information network may be damaged. Regrettably, executive agencies are not always eager to provide taxpayer financed information to the public.

We tend to think of information in terms of the new technology such as webs and the Internet. While these are exciting opportunities, the vast majority of the American people continue to receive their information through print, the way they have for decades. However, even as more people become comfortable with use of on-line access, the Congress must still hold the key to that access to assure that it is not limited through lack of oversight of the existing system.

We recommend that every federal agency be required to submit an annual plan for printing, information dissemination and publishing. This plan should be submitted as part of the budget request for the agency.

The plan should indicate how the agency plans to fulfill its responsibility to inform the public, and how it intends to produce the work, whether in-house or by contract. If the work is to be performed in-house, the report should indicate the equipment required for the work and the cost of such work.

The current system is biased against public information. Also, agencies develop a sense of ownership over the information they produce. An annual planning process would help the agencies focus on the mission requirements rather than proprietary needs of who produced the information and whose printing press was used.

Currently, there is no planning requirement for printing, publishing and information dissemination by federal agencies. Further, no one has information about printing or duplicating equipment or facilities owned by any federal agency. We believe there are as many as 800 printing and duplicating facilities. Over the years, the various plants have operated with little oversight to the point that there is no reliable information about the number of such facilities or what equipment is owned. A plan submitted by the agencies could help the Executive Branch and the independent agencies improve the utilization of existing equipment, better match equipment with printing requirements and help identify procurement opportunities. Some have speculated that federal printing and information expenditures may exceed three billion dollars. Regardless, we know the number is significantly above the approximately one billion dollars of printing handled by the GPO. The savings opportunities through better management of these requirements could result in significant budget savings.

We recommend that an appropriation be made specifically to assure that public information is made public. Congress should specifically appropriate funds for the Superintendent of Documents / Depository Library function.

Such an appropriation would assure that the agency producing the information is not reluctant to provide material through the Superintendent of Documents because of cost considerations.

Existing waivers for agency printing plants should be subject to a sunset provision.

Similar to the concerns raised above, there is a need to know what federal printing and duplicating facilities are in operation and which ones should be continued. With an eighteen month sunset provision, the Joint Committee on Printing could have an opportunity to determine if the need for the facility continues to exist and to terminate those operations which no longer meet the original mission. This would also give the Joint Committee on Printing the chance to consolidate facilities to assure greater efficiency. It should be a goal of this sunset provision to close any printing operations other than self service copy centers (unmanned).

The Congress has approved the establishment of printing facilities by statute in addition to the facilities approved the Joint Committee on Printing. The facilities should be subject to a sunset provision with the goal of repealing the statutes and closing the facilities within 18 months.

The current regulatory authority over Executive Branch printing granted to the Joint Committee on Printing should be repealed and that authority should be granted to the Government Printing Office.

We recommend that the rulemaking authority granted to the Joint Committee on Printing under Title 44 be transferred to the Public Printer.

There has been a court challenge (USINS v Chadha) over the issue of legislative veto. It is generally accepted that the opinion of the court in this challenge would apply to the rulemaking authority of the Joint Committee on Printing relative to Executive Branch printing. The same restrictions do not apply to the Government Printing Office since it is not a committee of Congress and is headed by a presidential appointee. In truth, the rulemaking authority of the Joint Committee on Printing is more symbolic in that the members of the committee are often not familiar with the nature of the rulemaking.

The Congress and the Executive Branch should implement some printing and contracting reforms to broaden the use of requests for proposal or request for quotation by federal agencies to better assess the services available in the industry.

The printing industry is changing rapidly. One of the key changes in the printing industry is the explosion of digital technology. While the industry is still dominated by "ink on paper" technology, we are seeing the emergence of a new printing industry. This new industry manages digital data, and printing is but one of the output options. A number of printing companies are already participating in this new industry and many more are

joining them everyday. I wish to offer the following quote from the executive summary of PIA's landmark study "Bridging to a Digital Future":

The printer's role in the digital future is yet to be determined. We foresee a blurring of the differences between printers, broadcasters, software and hardware developers, and others. The term "printer" with its implied "ink on paper" will be increasingly inappropriate. The traditional prepress services are evolving into a distinctive imaging business with the potential of feeding a wide range of media, only one of which will be print....As much as 50% of the sales revenues of printers in the year 2000 may be from products and services they do not produce today. Printers are already producing alternative media, with many involved in software production, CD-ROM production, data and text storage and print on demand, and a small percentage in video production.

Currently, it is difficult for federal agencies to take advantage of the broad array of technologies, data management skills, and information management of printing companies because federal laws tend to pigeon-hole printers as limited to ink on paper and limit the application of digital technology to companies which may not be printers. The government needs to be in a position to invite companies to submit ideas to improve how information is handled. Many of these companies are printers.

I raise these issues because of the implications of technological change on public information. There are two circumstances which will compromise the role of Congress and the federal government in tapping this industry's potential for providing public information services: investing in today's technology by government print shops or failing to provide a legal framework for the future.

We continue to believe the best way to provide information services to the government is through the private sector.

One of the successes of the GPO through the years has been its centralized procurement system. While this centralized procurement system should continue to evolve and improve, the essence of this program should be retained. Currently, more than 10,000 printing companies are on the list of potential GPO vendors. Most of these companies do not receive large government contracts. The companies which compete for and win these contracts are small companies in virtually every city in the nation. While there are some companies which specialize in government contracts, most use the work to utilize unfilled press time, and generally at a very favorable cost to the government. It is the single most successful small business contracting system in the federal government.

The issue of contracting out printing has often drifted to some fairly arcane arguments about constitutional law and whether the legislative branch should be procuring work for the executive branch. There are times when you have to look at something and ask the simple question, "Is it working?" This system is working. The less we attempt to fix it, the better off we will be.

Mr. Chairman, these remarks reflect our views on what we believe would represent the best reform for the federal government printing, publishing and information system.

Mr. HORN. Well, we thank you very much. That's a helpful perspective.

Let me ask one general question. I think most of you were here when the Public Printer and the Superintendent of Documents testified. Do any of you have a reaction to anything you heard in the exchange between members of the subcommittee and the witnesses? And if you would like to make some particular perspective, please go ahead.

Mr. Oakley.

Mr. OAKLEY. Yes, sir. Thank you for the opportunity to comment.

I did have a number of reactions, but one that struck me most forcefully was what seemed to me—and I spoke to Superintendent of Documents Wayne Kelley about this at the break—to be an understatement of the impact of the transition to electronics, that Mr. Owens had asked about, on libraries and on their users. I think the impact is indeed significant, and it is creating a significant burden on both libraries and on their users.

First of all, there is a great deal of information that is only available electronically, or at least only available in a timely manner electronically. One specific example that came to my attention in my library was the annual report of the U.S. Sentencing Commission. I had a faculty member who—in her own words—was “tearing her hair out” trying to find this particular publication.

Indeed, we checked, and the latest was not available through the Government Printing Office; the latest we had in our library was a 1994 version in microform. But I went to the agency's Web site, and sure enough, there it was on the Web site. And I thought, OK, the 1995 is available. But, unfortunately, it was probably about 500 pages long. Well, we weren't going to sit there and print out a 500-page document so that a faculty member could get access to this document.

In the end, we didn't have the microfilm; we didn't have the latest edition. It was only available on the World Wide Web. I did call the agency, and I requested a copy directly through them, but it was not available through the depository program.

There are other problems that are created by limitations of technology. How many computer work stations does the library have? Some libraries are more well-endowed than others and can afford access to the World Wide Web; some cannot. So the impact of this transition is significant.

And you, yourself, alluded earlier to the issue of the Congressional Record, and, indeed, I must add the U.S. Congressional Serial Set, which is creating a significant problem, as well. So I think that just needs to be emphasized.

Mr. HORN. Let me ask you, since you live in the most library-rich resource area in the world, namely, Washington, DC, and the great Library of Congress, are you a Federal depository also, at Georgetown?

Mr. OAKLEY. Yes, we are.

Mr. HORN. How about the other universities in the area? Are you the only one?

Mr. OAKLEY. I think most of the universities in the area are, as well as all of their law schools.

Mr. HORN. See, in the State of California, I think the only full depository is the California State Library. And maybe there's one in the south; I'm not sure where it is. Now, there are various Federal depositories. I'm not sure they get everything that they ought to get.

Mr. OAKLEY. I must add that we are not a regional depository, which would be a full depository. We only get a very select number of publications. And indeed, the Congressional Record and the Serial Set are only available to the regionals now, and therefore we, as a law library, cannot get those. That, as you might imagine, for a law library, is a serious problem.

Mr. HORN. Yes. I agree with you, and I don't know why we're so skimpy on that. It seems to me any basic university conducting research, at the undergraduate or graduate level, needs those basic tools of our major institutions.

Mr. OAKLEY. You would think so.

Mr. HORN. So we will try to prod around here, either Appropriations, Joint Committee on Printing, as the case may be.

You had a question, I think, Ms. Lechner.

Ms. LECHNER. Yes, I did. In fact, one thing I wanted to mention, when the issue was discussed about security and timeliness, with respect to using private sector printers, it is odd that Boeing, Microsoft, and Wall Street can rely on our timeliness and security, but the Government cannot. So I would like to point out that we think that we do a pretty good job. I'm not aware of any security violations our industry has ever been accused of.

On the other hand, I would like to mention the fact that Mr. Davis had brought up the question of small business contracting. I would like to point out that we think GPO does the best job of all the agencies in ensuring that small businesses get a huge, lion's share of the work. And we think that they are doing an excellent job in that area.

Mr. HORN. Thank you.

Mr. Jones.

Mr. JONES. Just very quickly. I believe, and my industry association does, that the underlying Government information should be available to everybody with no restrictions. Our job is to add value and enhance that information. That's what we are all about. We are, however, very much opposed to exclusive contracts which remove this information from the public's access.

[The information referred to follows:]

Much criticism has been leveled recently against arrangements between Federal agencies and private sector companies which, by giving one company exclusive rights to government information, remove the underlying government data from the public domain.

In his testimony, Mr. Jones very succinctly articulated IIA's position on this issue and we simply want to restate it for the record. IIA has long held the position that underlying government information created or collected by federal agencies and meant for public inspection should be available to any and all users on an equal and timely basis for the cost of dissemination. The Association is opposed to arrangements which place any restrictions on the collection or use of the information, including exclusive arrangements.

Mr. HORN. In other words, you would let anybody that wants to add their version of value-added in indexing, in content analysis, and all the rest of it?

Mr. JONES. That's what our industry is all about.

Mr. HORN. Yes. That's very interesting.

Does the gentleman from New York wish to question the witnesses?

Mr. OWENS. Do any of you think that the GPO should be part of the executive branch and we should dispense with the Joint Committee? Have you found the Joint Committee adequate to addressing your grievances?

Ms. LECHNER. From our perspective, there are any number of ways to make sure information is disseminated. However, I think, in hearings of this committee in past years on the issues that have been brought forward, that even Thomas Jefferson indicated it might be wise that public information be in the hands of Congress, because you are elected Representatives, and therefore you are more closely linked to the public who have the right to the information.

We believe that there will always be a role for Congress in dealing with public printing.

Mr. OWENS. Mr. Jones.

Mr. JONES. Personally, I feel it should stay where it is. We will—my industry association—I will submit a written comment on that question, as well, Mr. Owens.

[The information referred to follows:]

IIA has not taken an official position regarding the transfer of GPO to the executive branch. However, for many years, IIA has advocated that the legislative branch, in which GPO is located, adopt and comply with information dissemination policies similar to those included in OMB's circular A-130 and now codified in 44 USC 3506(d). Transforming GPO to an independent, executive branch agency would automatically make it subject to the same dissemination principles. Regardless of where GPO is located, IIA believes it and the other legislative branch entities including Congress should, in general, be subject to these dissemination principles.

Mr. OWENS. Your particular problem, though, what due process have you had with respect to NTIS publishing material?

Mr. JONES. What have I done, specifically? I have worked primarily through my congressional delegation to try to get to the Department of Commerce. We have a number of letters that we have submitted through—that our Senator, Senator Pat Leahy, has written to NTIS—actually, to the Department of Commerce, which then passed them on to NTIS.

I assume that OIRA has also seen those, but I have no evidence of that. There has been never any comment along those lines of the enforcement being looked at.

Mr. OWENS. So you have not gotten any satisfaction from your appeals to NTIS?

Mr. JONES. No action whatsoever.

Mr. OWENS. Is there another level? Where do you go next, to the White House? Would the White House be able to help?

Mr. JONES. I don't know. That might be a good suggestion. Thank you.

Mr. OWENS. Should we not have some other way of handling it, so that some power to deal with your problem would be somewhere else?

Mr. JONES. I really cannot answer that question, because I don't know the ins and outs of the Government well enough. Personally, I'd like to see anything that can be done, done. I can understand,

however, that Congress, with its funding responsibility, as I understand it anyway, seems to be an appropriate place to control that sort of thing.

Mr. HORN. Without objection, we will put in the record at this point the exchange of correspondence that you have had, or others have had in your association, with the Office of Regulatory Affairs and the Office of Management and Budget.

And staff will pursue trying to bring this to a head as to what are their policies in this area, and is this a violation of the memorandum that the directors have issued over time, and what is the basis for using the Paperwork Reduction Act as an excuse for this, if that, indeed, is their basis?

So, if you have those and staff can work it out with you, we would like an exhibit at this point in the record, without objection.

Mr. JONES. We will. Thank you very much.

[The information referred to follows:]

In this section of the transcript an important dialog occurs between Mr. Owens and Mr. Jones regarding an appropriate enforcement mechanism for bringing NTIS into compliance with the information dissemination rules of the *Paperwork Reduction Act* (PRA). Mr. Horn also asks on page 86 that IIA and NewsBank, inc. submit, for the record, all correspondence between IIA, NewsBank, inc. and the Office of Information and Regulatory Affairs (OIRA) and the Office of Management and Budget (OMB). We have attached all correspondence on this issue. However, the correspondence has been between IIA and NTIS not between IIA and OIRA or OMB. On behalf of NewsBank, inc., the correspondence has been primarily between Senators, Leahy and Jeffords and former Commerce Secretary Mickey Kantor as well as between Representative Shays and NTIS. We believe the lack of OIRA involvement to date is telling.

Additionally, in further response, we want to again commend the Subcommittee for holding this important hearing which allowed IIA and others to raise issues of concern regarding federal government information dissemination. As Mr. Jones and the other witnesses stated, IIA believes that Congress is the ultimate enforcer of the law and must hold agencies accountable when they are not in compliance. We appreciate the Subcommittee's willingness to further pursue with OIRA the issues raised regarding NTIS.

Unfortunately, IIA has found OIRA to be less than vigorous in enforcing the law and in assuring that agencies like NTIS do not blatantly disregard its tenets. We would also suggest that OIRA be asked, on a regular basis, to provide Congress with reports on actions taken to ensure that agencies, like NTIS, are abiding by the PRA dissemination rules. We believe there is much more OIRA could be doing.



CONGRESS OF THE UNITED STATE

May 27, 1997

Donald R. Johnson
Director
National Technical Information Service
5285 Port Royal Road
Springfield, Virginia 22161

Dear Mr. Johnson:

Recently I was made aware by Dan Jones, President of Newsbank, a company in the Fourth Congressional District of Connecticut, of concerns he has regarding practices of the National Technical Information Service (NTIS). I wanted to let you know of his concerns.

NTIS produces a product called World News Connection (WNC) which competes directly with private sector companies. Mr. Jones would like to know the justification for the dissemination of Federally-subsidized electronic news products which compete with the private sector.

According to Mr. Jones, revenues are not covering development costs of the WNC product of NTIS. He also believes other expenses (rent, equipment, personnel) are taxpayer supported. I would appreciate any information you can provide me that will help address Mr. Jones' concerns.

In the President's Fiscal Year 1998 (FY98) budget, several Federal organizations are proposed for conversion to "Performance Based Organizations (PBO)" including NTIS. The criteria for such selection include "units of government committed to clear management objectives, measurable goals, customer service standards, and specific targets for improved performance."

In light of this criteria, I would appreciate your providing me with the service goals established by NTIS.

If you have any further questions, please do not hesitate to contact me or my chief of staff, Peter Carlsen, at 202/225-5541.

Thank you for your attention to this matter.

Sincerely,

Congressman
Christopher Shays
Fourth District Connecticut

Offices
10 Middle Street, 11th Floor
Bridgeport, CT 06604-4223

Government Center
888 Washington Boulevard
Stamford, CT 06901-2927

1502 Longworth Building
Washington, DC 20515-0704

Telephones
Bridgeport 579-5870
Norwalk 866-6469
Stamford 357-9277



UNITED STATES DEPARTMENT OF COMMERCE
National Technical Information Service
5205 Port Royal Road
Springfield, Virginia 22161
OFFICE OF THE DIRECTOR

STANDARD FORM NO. 64

1010-108-01

June 2, 1997

The Honorable Christopher Shays
House of Representatives
Washington, D.C. 20515

Dear Mr. Shays:

Thank you for your letter regarding the World News Connection (WNC), an on-line subscription offered to the public by the National Technical Information Service (NTIS). This unique product is based on a data stream from major radio and television news programs, as well as magazines and newspapers, from around the globe. This information is derived from publicly available and privately owned sources by the intelligence community for the official use of the U.S. Government. In addition to use by federal government policymakers, this information has been available to the public in a popular daily report format. NTIS has sold this paper daily report to American industry for more than twenty-five years.

Within the past year the intelligence community decided that it could no longer make this paper version available to the public because of rising printing costs and changes in international copyright. In order to maintain the availability of this important news resource, NTIS has entered into hundreds of copyright royalty arrangements with foreign content owners and moved to an extremely friendly on-line means of delivery. This means that American industry can continue to receive this important product at a modest cost.


To our knowledge, neither NewsBank nor any other firm has ever informed us that it considered the "Daily Reports" as a competitor and we know of no reason why the on-line product should be viewed that way, either. Indeed, if any comparable information product of the depth and scope of the "Daily Reports" or the WNC were available from the private sector, the Government would not collect and translate it independently at its own expense.

Mr. Jones may be interested to learn that taxpayers are not supporting the WNC. NTIS receives no appropriations and is required to support itself through the sale of its information products and services. NTIS is required by law to be self-sustaining and to cover all costs, including rent,

equipment, and personnel. WNC is currently breaking even on operating costs but we have not yet recovered our startup costs.

NTIS is eager to establish business relationships with private information vendors. We would be delighted to work out a distribution arrangement with Mr. Jones that would benefit NewsBank as well as the American people.

Sincerely,

A handwritten signature in cursive script, reading "Donald R. Johnson".

Donald R. Johnson
Director

**QUESTIONS SUBMITTED BY SENATOR ERNEST HOLLINGS
FOR SENATOR LEAHY**

Secretary Daley, Senator Leahy has raised several issues regarding the NTIS' World News Connection (WNC). I would appreciate your answers to the following questions:

Question. The WNC replaced a paper publication known as the "FBIS Daily Reports." What were the monthly circulation numbers for the final year of "FBIS Daily Reports" and the monthly circulation numbers for the WNC since its inception?

In addition, what was the monthly paid subscriber numbers for the "FBIS Daily Report" and what are the monthly paid subscriber numbers for the WNC since its inception?

Answer. The requested figures are attached.

Question. The WNC operating cost is included in the NTIS budget for fiscal year 1998. What is the projected revenue for WNC in FY 1998 and what is its projected operating costs? In addition, please provide the subcommittee with the projected revenue and cost figures FY 1996 and FY 1997 and the actual revenue and cost figures for FY 1996.

Answer. For FY 1996 we projected \$600,000 in revenue and \$417,000 in costs. However, the program was inaugurated later in the year than we anticipated. The actual FY 1996 revenue and costs were \$97,922 and \$376,211 respectively. Based on that experience, we projected FY 1997 revenue and costs at \$419,400 and \$675,000 respectively. Our projections are on target. The projected revenue and costs for WNC in FY 1998 are each \$800,000. That is, WNC should break even in FY 1998.

Question. Does NTIS market the WNC? If so, what are the target subscriber goals that NTIS seeks to achieve in FY 1998?

Answer. NTIS does market the WNC. The target subscriber goals for FY 1998 are 800 individual subscriptions and 55 networked access subscriptions.

Question. The Department of Commerce has previously indicated that translation costs of articles included in the WNC are not borne by NTIS. Why does NTIS not incorporate this cost into the subscription rate for WNC? What is the estimated cost for this translation?

Answer. NTIS does not incur any translation costs with respect to WNC. Similarly, translation costs were not charged when the product was distributed in paper form. Such costs are borne by the Foreign Broadcast Information Service (FBIS), which is part of the Central Intelligence Agency (CIA), in accordance with its requirement to collect foreign open source literature for federal policy makers. NTIS is provided the data feed from FBIS, which consists of the translated articles, in order to make them accessible to the public. NTIS is unaware of the estimated costs for the translations. This question should be referred to FBIS.

Question. What is the number of sources that were included in the "FBIS Daily Report" and what is the number of sources that are now included in the WNC?

Answer. As NTIS did not produce the "FBIS Daily Reports," it is unaware of the number of sources included in the "FBIS Daily Reports." This question should be referred to FBIS. There are 3,442 sources included in WNC.

Attachment

Attachment**Foreign Broadcast Information Service (FBIS) -- Daily Reports**

Month/Year	Paying Subscribers	Copies Circulated per Month
October '95	644	35,547
November '95	651	29,795
December '95	695	30,961
January '96	546	30,973
February '96	453	21,145
March '96	470	25,749
April '96	475	28,487
May '96	469	25,407
June '96	464	21,060
July '96	450	22,513
August '96	230	12,599
September '96	165	<u>1,540</u>
		285,777

World News Connection

Month/Year	Paying Subscribers*
November '95	0
December '95	0
January '96	46
February '96	67
March '96	125
April '96	154
May '96	184
June '96	204
July '96	234
August '96	346
September '96	450
October '96	499
November '96	547
December '96	559
January '97	585
February '97	614
March '97	641
April '97	622

*WNC is an electronic product, so we do not have figures for copies circulated.

Kasten & Co.

815 Connecticut Avenue, N.W. Suite 800
Washington, D.C. 20006

Tel: (202) 223-9151
Fax: (202) 813-8082

June 20, 1996

The Honorable Patrick J. Leahy
433 Russell Senate Office Building
Washington, DC 20510

Dear Senator Leahy:

Thank you for scheduling the meeting with NewsBank on Tuesday, June 25, 1996. In preparation, I wanted to share with you some background information on NewsBank and the issue we would like to discuss with you.

Last fall, the National Technical Information Service (NTIS), a fee-funded agency of the Department of Commerce, announced a new on-line product, the World News Connection (WNC). The WNC goes far beyond the traditional government information dissemination activities and by unfairly competing with private information providers could result in the loss of jobs at NewsBank and other companies in the information industry.

NewsBank, a privately held publisher, provides information resources to classrooms, libraries and research centers worldwide. Many of their current news information products already are serving the same audience targeted by the new WNC product. If NTIS's products are successful in displacing NewsBank's important product lines from the marketplace, jobs associated with those product lines will be in jeopardy. As you know, the company currently employs 260 people in Chester, Vermont.

With hundreds of private-sector companies involved in the information industry the public is fully served without the addition of a federal agency.

As part of the WNC project, NTIS has also begun compensating foreign publishers for the use of their information through royalty agreements, and in doing so, will directly compete with NewsBank and other private sector publishers for the rights to the information being used in WNC. The government's purchasing of information from outside sources marks a glaring departure from its traditional role in publishing government information, and one which NewsBank believes is entirely inappropriate.

Hon. Patrick J. Leahy
June 20, 1996
Page two

For many years, NTIS has been redisseminating information from various government agencies far in excess of the intent of its authorizing legislation, the American Technology Preeminence Act. This law limits the type of technical data which NTIS is authorized to redisseminate. The information in World News Connection is clearly not the type of information envisioned by the Act for NTIS to redisseminate.

NTIS is also in violation of the Paperwork Reduction Act of 1995 (PRA). The language of the PRA (section 3507) prohibits restrictive distribution arrangements for government information, and requires the broadest possible availability of government information to the public. NTIS has clearly violated the spirit of this law, by placing restrictive royalty arrangements on this information. This practice makes it difficult for private sector companies to expand distribution of this information to the American public as envisioned by the PRA.

The Paperwork Reduction Act of 1995 and OMB's Circular A-130 spell out federal agency information dissemination policies.

With respect to information dissemination, each agency shall... not, except where specifically authorized by statute... establish an exclusive, restricted, or other distribution arrangement that interferes with timely and equitable availability of public information to the public; restrict or regulate the use, resale or redissemination of public information by the public; charge fees or royalties from resale or redissemination of public information; or establish user fees for public information that exceed the cost of dissemination...

NTIS, due to its fee-funded nature, has been engaging in practices which are exactly like a private sector company. These practices are competing with, and can potentially harm, private firms such as NewsBank.

Thank you for your attention to this matter and we look forward to discussing this issue with you further on Tuesday.

Sincerely,

Robert W. Kasten, Jr.
President

P.S. You may be more familiar with NewsBank as Readex. NewsBank bought Readex several years ago

 **NewsBank, inc.**
 58 Pine Street
 New Canaan, CT 06840-5426
 (203) 966-1100

The National Technical Information Service (NTIS), a U.S. government agency, poses a significant threat to NewsBank, Inc., which employs 260 people in Vermont.

NTIS's recent development of the World News Connection (WNC) product threatens the future livelihood of our company by bringing to market a product that directly and unnecessarily competes with products and services by NewsBank and others in the information industry. This threat will jeopardize jobs in three states where our company has significant operations.

NewsBank, a privately held publisher, provides information resources to classrooms, libraries and research centers worldwide. NewsBank publishes many current news information products aimed at the same audience as the new World News Connection. WNC is now in direct competition with some of NewsBank's most important product lines, which have been on the market since 1981, as well as other products published by other private sector electronic information companies. If NTIS's products are successful in displacing NewsBank's important product lines from the marketplace, our jobs associated with those product lines will be in jeopardy.

In order to bring the WNC project to fruition, NTIS has undertaken actions that directly threaten NewsBank's ability to gather source material for its product lines in glaring departure from its traditional role in acting as a central repository of scientific, technical and engineering information. NTIS has begun compensating foreign publishers for the use of their information that will be included in World News Connection. The negotiation of royalty agreements with these foreign entities in the name of the U.S. government seriously undermines the ability of NewsBank and other private sector publishers to negotiate for the rights to the information being used in WNC. It is entirely inappropriate for NTIS to act in this manner and indeed would indicate yet another attempt by the agency to reach beyond its authorized mandates.

No survey of marketplace or public notice/comment in violation of the PRA

Section 3506(d) of the PRA requires government agencies to issue public notification prior to creating, changing or deleting an information product. NewsBank is aware of no such activity and thus was unable to comment on the WNC product prior to its creation. In addition, this section requires agencies to consider (among other factors) effects on the marketplace of these actions. We do not know of any such study.

"Non-technical" information violates limits of ATPA's NTIS mandate

For many years, NTIS has been redissemminating information from various government agencies far in excess of the intent of the authorizing legislation for NTIS, the American Technology

Preeminence Act (ATPA), Public Law 102-245. This law limits the type of technical data which NTIS is authorized to redisseminate. The information in World News Connection is clearly not the type of information envisioned by the ATPA for NTIS to redisseminate.

Restrictive Distribution Arrangements Violate PRA

NTIS is also in violation of the Paperwork Reduction Act of 1995, Public Law 104-13 (PRA). The language of the PRA (section 3507) prohibits restrictive distribution arrangements for government information, and requires the broadest possible availability of government information to the public. NTIS has clearly violated the intent of the law, by placing restrictive royalty arrangements on this information.

This practice makes it difficult for private sector companies to expand distribution of information to the American public as envisioned by the PRA. NTIS either failed to make itself aware of private sector activities to provide similar information products and services or it ignored the impact of its World News Connection on existing private sector competitors in the marketplace. In either case, NTIS is in violation of PL 104-13, and for this reason alone, it should withdraw the World News Connection service.

In conclusion, NTIS has for years been engaging in practices which are very much like a private sector company. These practices are competing with, and can potentially harm private firms such as ours. NewsBank, Inc. protests this U.S. government intrusion on the domain of private sector industry and private sector jobs and urges Congressional intervention to protect its ability to compete fairly with all entrants into the market.

JAMES C. HATCH, UTAH, CHAIRMAN
 STROM THURMOND, SOUTH CAROLINA
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 HANK BROWN, COLORADO
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 MARK R. DILLON, Chief Counsel
 MANUS CONNEY, Staff Director and Senior Counsel
 CYNTHIA C. MCKAN, Minority Chief Counsel
 KAREN A. ROSS, Minority Staff Director

United States Senate
 COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

July 8, 1996

The Honorable Mickey Kantor
 Ambassador
 U.S. Trade Representative
 600 17th Street, N.W.
 Washington, D.C. 20506

Dear Mickey,

I am advised that a new on-line product, called the "World News Connection" (WNC), of the Department of Commerce's National Technical Information Service (NTIS) threatens to undermine the business of NewsBank, a privately held publisher with 260 employees in Chester, Vermont.

NewsBank sells products very similar to WNC to classrooms, libraries and research centers worldwide. These key markets served by NewsBank are also targeted by NTIS for its new WNC product, but at a cost which is subsidized by the taxpayer and with which NewsBank cannot compete.

I firmly support federal agencies in their efforts to disseminate government information to our citizens and, in fact, have sponsored legislation to increase the amount of, and on-line access to, such information. According to the Department of Commerce's description, however, WNC does not include any U.S. information, but only "time sensitive information gathered from thousands of foreign media sources, including political speeches, television programs and radio broadcasts, and articles from newspapers periodicals, and books."

I am concerned that the purchasing by NTIS of information from outside sources and then reselling it marks a departure from its traditional role in publishing government information, and one which may well displace private sector jobs. Specifically, I would appreciate your response to the following issues that have been raised regarding WNC:

First, did NTIS provide public notice prior to introducing the WNC, in compliance with the Paperwork Reduction Act?

Second, did NTIS study the effects on the marketplace of introducing WNC and, if so, what were the conclusions of this study?

Third, does subscription revenue cover all the costs of WNC and, if not, what other sources of funding are used?

Finally, does WNC enter into royalty agreements to obtain from outside sources the information it publishes and, if so, how do those agreements compare with the "market rate"?

Thank you for your prompt attention to this matter.

Sincerely,

[Signature]
PATRICK J. LEAHY
United States Senator

*Jimmy - If someone could
check the L's really
appreciate it*

United States Senate
WASHINGTON, DC 20510-4503

July 9, 1996

1200000000
 APPLICATIONS
 INDIAN VACCINATION
 THE POWER OF SOLAR
 ENERGY AND NATURAL RESOURCES
 AGRICULTURE AND HUMAN RESOURCES
 INDIAN VACCINATION
 INDIAN VACCINATION
 VETERANS
 SOCIAL RESOURCES ON AGING

The Honorable Mickey Kantor
Department of Commerce
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Mr. Secretary:

For many years I have been working for passage of legislation to insure that federal agencies make government more accessible to its citizens. Access to electronic government records helps hold the government accountable, but also is of vital economic importance to the information industry and a company located in my state.

Government information is a valuable commodity and a national resource that commercial companies pay for, add value to, and then sell – creating jobs and generating revenue in the process.

Last fall, the National Technical Information Service (NTIS), a fee-funded agency of the Department of Commerce, announced a new on-line product, the World News Connection (WNC). It appears the WNC goes far beyond the traditional government information dissemination activities and by unfairly competing with private information providers could result in the loss of jobs in the information industry.

NewsBank, a privately held publisher with a large facility in Vermont, provides information resources to classrooms, libraries and research centers worldwide. Key markets which NewsBank serves are also targeted by the new WNC product. If NewsBank's ability to place its products is hampered due to the introduction of NTIS's electronic products, jobs associated with those product lines will be in jeopardy.

I would like your response to the following issues that have been brought to my attention regarding this new product:

In compliance with the Paperwork Reduction Act, did NTIS provide public notice prior to introducing the World News Connection?

Did NTIS study the effects on the marketplace of introducing WNC? Is the total expense of publishing, distributing, etc., WNC completely paid for through subscription revenue, and if not, what other sources of funding are utilized?

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1. The Board of Directors shall have the authority to declare dividends on the common stock of the Corporation.

1994-1995
 1996-1997
 1998-1999

TESTED ON MEOW FOR PAGES

The Honorable Mickey Kantor
July 9, 1996
Page two

What are the royalty agreements with sources for the WNC, and how do these agreements compare with the "market rate?"

I am concerned that the government's purchasing of information from outside sources and then reselling it marks a departure from its traditional role in publishing government information, and one which may well displace private sector employees.

Thank you for your attention to this matter and I look forward to hearing from you soon.

Sincerely,

James M. Jeffords

JMJ:wbt



HOWARD DEAN, M.D.
Governor

State of Vermont
OFFICE OF THE GOVERNOR
Montpelier 05609

Tel.: (802) 828-3333
Fax: (802) 828-3339
TDD: (802) 828-3346

August 23, 1996

The Honorable Mickey Kantor
Ambassador
U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20506

Dear Mickey,

I've tried to contact you by phone about this without success.

I understand that the National Technical Information Service (NTIS), of the U.S. Department of Commerce, is producing a new product line called the "World News Connection" (WNC). Unfortunately, the NTIS will directly compete with NewsBank, a private business in Vermont that produces a product very similar to the WNC. This competition subsidized by taxpayers, seriously jeopardizes NewsBank and other private companies.

While I appreciate and support NTIS's efforts to distribute government information, and recognize they do not wish to endanger private companies, I am understandably troubled. By selling and reselling information, the NTIS is taking on a role that has traditionally been one for the private sector.

I would greatly appreciate your assistance to ascertain what efforts, if any, were made by the NTIS to determine the possible impact of the WNC on the marketplace. As well as, whether the NTIS enters into any royalty agreements to obtain information and whether it uses subscription revenues from the WNC to cover its costs.

Thank you in advance for any assistance or information you are able to provide.

Sincerely,

Howard Dean, M.D.
Governor

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 KAREN A. ROSS, Minority Staff Director

United States Senate

COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

RECEIVED

AUG 27 1996

NEW CANAAN, CT • 06840
 58 PINE ST. • NEW CANAAN, CT • 06840

August 23, 1996

Daniel S. Jones, President
 NewsBank, Inc.
 P.O. Box 219
 Chester, Vermont 05143

Dear Dan:

As you know, after our meeting in June, I inquired of Micky Kantor about the National Technical Information Service's (NTIS) new on-line product, World News Connection (WNC).

My staff, along with member of Senator Jefford's staff, recently met with Walter Finch, Associate Director for Business Development at NTIS, David (Dug) Greevy, a specialist from the Office of Business Development, and other senior Commerce Department representatives to discuss this matter. Apparently, WNC was launched to make available electronically the same foreign open-source material that has been distributed in paper form in the publication Daily Report. This publication is initially prepared by the Foreign Broadcast Information Service, which is part of the Central Intelligence Agency, and then distributed to the public by NTIS.

The CIA is phasing out the paper form of the Daily Report and will only make the material available electronically. WNC is the distribution outlet that NTIS has developed to continue to make this material, which is originally collected by a government agency at taxpayer expense for legitimate government uses, available to the public, much as it did with the Daily Report. Since this material is copyrighted, NTIS is ensuring through agreements with original sources that WNC has the right to distribute an electronic version of the material.

The Commerce Department representatives, particularly Mr. Finch, were aware of NewsBank's indexing product for the Daily Report and the impact on NewsBank resulting from the phasing out of the Daily Report.

Mr. Finch and Mr. Greevy are willing to discuss with you options for possible new product lines using WNC. If that would be helpful, I would be happy to set this meeting up. Please call Beryl Howell, at 202-224-3406, to discuss times that would be convenient.

Sincerely,


 PATRICK J. LEAHY
 United States Senator

NewsBank, inc.

P.O. Box 219, Chester, Vermont 05143
(802) 875-2397 • FAX (802) 875-2371

September 24, 1996

The Honorable Senator Patrick J. Leahy
United States Senate
Washington, DC 20510-6275

Dear Senator Leahy:

Thank you for your August 23 letter regarding NewsBank's difficulties with the National Technical Information Service (NTIS).

It appears that NTIS has missed the point of NewsBank's objection to their World News Connection product. The real problem is that WNC competes with NewsBank's international information products, not our index to the *FBIS Daily Reports*, which are being phased out.

NTIS apparently has not assessed the impact of its new product on NewsBank and other private sector businesses, as required by the Paperwork Reduction Act. WNC competes not only with NewsBank but with others in the information industry and violates the spirit, if not the letter, of P.L. 104-13. Consider the attached correspondence from the Information Industry Association.

If WNC material is copyrighted, as your letter states, then it is not U.S. government information. It is private information that NTIS acquired by paying royalties to many of the same publishers that NewsBank and other private information providers pay.

While we agree with your observation that there is a legitimate need for this information to be disseminated for government use, there is no need for NTIS to sell this information outside the U.S. government, since a number of private companies fulfill this need with similar information. WNC clearly goes far beyond the NTIS mandate to re-disseminate U.S. government information.

In addition, your July 8 letter to Mickey Kantor poses four questions about WNC—none of which appear to have been fully addressed by NTIS, based on the information you relayed to us.

NTIS did indicate that they are paying royalties, though they have apparently not indicated how their rate compares to the market rate. Three other essential questions remain:

Did NTIS provide public notice prior to introducing WNC in compliance with the Paperwork Reduction Act (as discussed above)?

Did NTIS study the effects on the marketplace of introducing WNC

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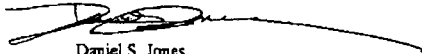
and if so, what were the conclusions of that study?

Does subscription revenue cover all the costs of WNC and if not,
what other funding sources are used?

In closing, you reference that NTIS would be willing to meet with NewsBank. We would welcome the opportunity to meet with Don Johnson, Director of NTIS-- with your staff present. I also want to be clear that our goal remains stopping this government competition and preserving jobs in our Vermont facility. I will be in touch with your office to arrange a meeting.

Thank you again for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Daniel S. Jones", with a long horizontal flourish extending to the right.

Daniel S. Jones
President

DSJ/pj
attachment

ORRIN G. HATCH, UTAH, CHAIRMAN
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United States Senate
 COMMITTEE ON THE JUDICIARY
 WASHINGTON, DC 20510-6275

October 10, 1996

The Honorable Mickey Kantor
 U.S. Department of Commerce
 Washington, D.C. 20230

Dear Mickey,

We both wrote to you separately in July 1996 about a new on-line product, called the "World News Connection" (WNC), of the Department of Commerce's National Technical Information Service (NTIS). WNC competes directly with a number of information products of NewsBank, a privately held publisher with 260 employees in Chester, Vermont that has provided international news information for over fifteen years.

At a meeting in August with members of our staffs, NTIS representatives acknowledged that the phasing out of the FBIS paper publication *Daily Reports* prompted the launch of WNC and made obsolete NewsBank's indexing product for *Daily Reports*.

WNC represents a larger threat to the business of NewsBank than the loss of its indexing product for *Daily Reports*. WNC obtains its news and information from many of the same non-U.S. media sources that NewsBank uses not only for its microfiche products (e.g., NewsBank, NewsBank Reference Service, NewsBank Reference Service Plus), but also for its electronic and planned on-line products (e.g., Global NewsBank, International NewsFile, International NewsBank, NewsBank NewsFile Collection, CD NewsBank, and NewsBank Curriculum Resource).

While we appreciate the time NTIS representatives spent with our staffs, we remain very concerned that the launch of WNC paid inadequate attention to supplanting private sector information services. We would appreciate written responses to the following questions regarding WNC that we raised in our earlier letters:

First, did NTIS provide public notice prior to introducing the WNC, in compliance with the Paperwork Reduction Act and, if so, in what form were the notices provided?


Second, did NTIS study the effects on the marketplace of introducing WNC and, if so, what were the conclusions of this study?

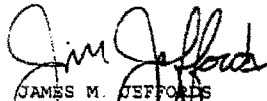
Third, does subscription revenue cover all the costs of WNC, including translation costs, and if not, what other sources of funding are used?

Finally, we understand that WNC enters into royalty agreements to obtain from outside sources the information it publishes and we would like to know how those agreements compare with the "market rate"?

Thank you for your prompt attention to this matter.

Sincerely,


PATRICK J. LEAHY
United States Senator


JAMES M. JEFFORDS
United States Senator

cc: Daniel S. Jones, President
Patrick Jeffrey, Dir. Of Public Relations
NewsBank

ORRIN G. HATCH, UTAH, CHAIRMAN
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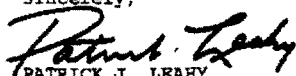
December 12, 1996

Mr. Daniel S. Jones
 President
 Newsbank, Inc.
 P.O. Box 219
 Chester, Vermont 05143

Dear Mr. Jones:

Enclosed are Mickey Kantor's responses to the questions Senator Jeffords and I asked the Department of Commerce regarding "World News Connection." Please let me know your thoughts after you have had an opportunity to review this response.

Sincerely,


 PATRICK J. LEAHY
 United States Senator

enclosure

cc: Patrick Jeffrey
 Robert W. Kasten, Jr.
 Pat Kennedy



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

DEC - 2

The Honorable Patrick J. Leahy
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

Thank you for your cosigned letter regarding the World News Connection (WNC). The WNC is an on-line subscription service operated by the National Technical Information Service (NTIS), an agency of the Department of Commerce that supports itself solely by the sale of technical information products and services. Through the WNC, NTIS makes available to the public information that has been collected by the United States intelligence community from thousands of newspapers, magazines and other open source material around the world.

Your letter suggests that the introduction of the WNC as a replacement for the Foreign Broadcast Information Service's printed "Daily Reports" rendered obsolete an indexing product based on those Reports that had been produced by your constituent, NewsBank. It also suggests, more broadly, that WNC improperly competes with the private sector. I appreciate the opportunity to clarify both points as I believe they raise important questions of public policy.

The information made available through the WNC is collected by the intelligence community to aid federal policymakers. Such information is often important to investment, exporting and other private sector activities which the Department of Commerce serves. Therefore, to further the Department's mission, NTIS has distributed it for more than twenty-five years in paper form. NewsBank was a subscriber and, as your letter notes, even created a value-added indexing product based on it. We are not aware that NewsBank or any other firm ever viewed the "Daily Reports" as a competitor. Indeed, if any information product of the depth and scope of the "Daily Reports" had existed from the private sector, the Government would not have collected and translated this information independently.

The intelligence community decided that it would no longer make this product available to the public in printed format. That decision was based in part on the high cost of printing. However, it was also based on difficulties that the intelligence community ran into in securing copyright clearances. NTIS agreed to convert it to an electronic format and to secure the necessary clearances. This meant that an important product that is compiled by the intelligence community at considerable effort

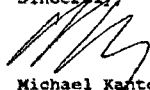
The Honorable Patrick J. Leahy
Page 2

could continue to be made available to the taxpayers. The intelligence community's decision to terminate the printed version, however, also eliminated the need for NewsBank's indexing feature.

We are interested to learn from you that NewsBank has plans for on-line products. NTIS has informed me that its copyright licenses enable it to make the WNC available to qualified commercial sublicensees. At some point, I would hope that NewsBank and NTIS may be able to work together so that a wider public can access this valuable information product.

I am enclosing an attachment prepared by the NTIS responding to your specific questions. If you have any questions concerning the intelligence community's decision to terminate the printed version of the "Daily Reports" or the adequacy of private sector information products for Government intelligence needs, I suggest you bring your concerns to the attention of the Director of Central Intelligence who is in a better position to address them.

Sincerely,



Michael Kantor

Enclosure

RESPONSE TO QUESTIONS POSED BY SENATOR LEAHY
AND SENATOR JEFFORDS REGARDING THE
WORLD NEWS CONNECTION (WNC)

1. Did NTIS provide public notice prior to introducing the WNC, in compliance with the Paperwork Reduction Act and, if so, in what form were the notices provided?

For several months prior to launching WNC, NTIS invited focus groups in to help it design and test the product, demonstrated how it would work at appropriate trade fairs, and announced its impending availability at speeches and other appropriate public events. In addition, for several months the "Daily Reports" sent to all subscribers, including NewsBank, contained statements that the printed version was to be discontinued.

2. Did NTIS study the effects on the marketplace of introducing WNC and, if so, what were the conclusions of this study?

NTIS did not conduct a formal study. The WNC is essentially an electronic version of a popular product that had existed in another format for many years and had no private sector counterpart. As the intelligence community determined that it would no longer pay to have the product printed, NTIS was concerned with preserving the public's access to information the public had paid for and that had proven to be popular.

3. Does subscription revenue cover all the costs of WNC, including translation costs, and, if not, what other sources of funding are used?

Subscription revenues are just about at break even on operating costs, but we have not recovered all development costs. This is not unusual. Many new products or new formats for existing products take time to break even. We expect that the WNC will be no exception. Until then, development costs were supported through other products and services sold by NTIS. NTIS is required to be fully self-supporting. Accordingly, it seeks no annual appropriations for the WNC or any of its other products or services.

As a technical matter, the open sources used are either in English or are translated by the intelligence community, so there are no translation costs that are borne by NTIS.

4. Finally, we understand that the WNC enters into royalty agreements to obtain from outside sources the information it publishes and we would like to know how those agreements compare with the "market rate"?

NTIS places 25 percent of revenues in a royalty pool to be divided with copyright holders based on usage of their materials. Consultation with industry experts indicated that private sector royalty rates ranged from 15 percent to 40 percent for comparable content.

NewsBank, inc.

P.O. Box 219, Chester, Vermont 05143
(802) 875-2397 • FAX (802) 875-2371

January 14, 1997

The Honorable Senator Patrick J. Leahy
United States Senate
Washington, DC 20510

Dear Senator Leahy:

Thank you for forwarding the December 2 letter from Mickey Kantor regarding difficulties NewsBank, inc. is experiencing with the National Technical Information Service (NTIS). I am providing my thoughts on the letter as you request in your cover letter.

We have noted Mr. Kantor's remark that NTIS and NewsBank may be able to work together "at some point," but that does not address the issue which threatens jobs at our Vermont facility, where NewsBank employs 275 people. Mr. Kantor's response has also left unanswered key questions which you and Senator Jeffords raised in your letter of October 10.

In the first paragraph of Mr. Kantor's letter, he mentions that NTIS provides "technical" government information to the public. I question how "technical" broadcast news is, and we continue to dispute the very broad interpretation of the term "technical" as viewed by NTIS.

NTIS was formed to make available *government* information which would not otherwise be available to the public, but *hundreds* of sources within NTIS' World News Connection product (WNC) are available from commercial sources, such as the BBC, Lexis-Nexis, and other English-language sources which can be obtained directly from individual media outlets such as Xinhua (China), Kyodo (Japan), Deutsche Press-Agentur (Germany), and Agence France Presse (France). Thus, NTIS is violating the intent of their charter by providing the same sources in WNC (which are from *private, copyrighted sources*), as NewsBank and other private publishers use in their products, and thus is competing with the private sector.

The third issue is the extent of taxpayer support for WNC. Mr. Kantor argues that this information should be made available to the public because it is prepared at taxpayer expense, but much of it *already is* available to the public through other sources. In the addendum to Mr. Kantor's letter, the NTIS states that translation expenses which are borne by taxpayers (and presumably other overhead expenses, such as rent, etc.) are not included in this product. This creates a cost structure far below that of private tax paying businesses such as NewsBank.

Mr. Kantor further bases many of his statements on the fact that WNC is essentially the same product as the former paper Daily Reports. This is incorrect because it appears there are approximately 400 sources not in WNC which were in the former FBIS Daily Reports. While

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there was no competing product for the paper Daily Reports, now that it is in electronic format, WNC is now competing in a marketplace with other electronic products which contain similar information. *The ELECTRONIC delivery of the information is the crucial difference which now creates the threat to NewsBank.*

The last area still unanswered from your October 10 letter has to do with NTIS' violation of the requirements of the Paperwork Reduction Act (PRA) by failing to conduct a study of the marketplace when this information was changed to electronic format (see Question 2 of the addendum to Mr. Kantor's letter). The change to electronic format, along with the change in the sources from the FBIS reports, is clearly a *major* change in a product, and Section 3506(d)(3) of the PRA requires a study of the marketplace for new information products or *changes in existing products.*

Had NTIS conducted the study required by the PRA, it would have discovered that electronic information already exists which duplicates much of the content of WNC, and that WNC would be competing with private sector firms, the opposite of the mission of the Commerce Department to foster private enterprise.

Mr. Kantor's suggestion that we contact the CIA regarding its decision to stop publication of the paper Daily Reports does not address NewsBank's concerns and is not relevant to this issue.

I am hoping that we can obtain a prompt response to this letter because important jobs in Vermont are at stake. I am aware that the Department of Commerce and NTIS will be subject to annual oversight hearings in both the House and the Senate soon, and NewsBank would like to see these problems addressed in the appropriate oversight or confirmation hearings coming up this session.

Sincerely,

Daniel S. Jones
President

DSJ/pj



INFORMATION INDUSTRY ASSOCIATION

July 30, 1996

Dr. Don Johnson
Director
National Technical Information Service
5285 Port Royal Rd.
Springfield, VA 22161

Dear Dr. Johnson:

On behalf of the Information Industry Association, I am writing again to express strong concern regarding several recent NTIS activities. These activities are in direct conflict with the Paperwork Reduction Act of 1995 ("PRA," "P.L. 104-13") and other good government information policy practices. They include the continued use of flawed 1996 Database Agreements; implementation of a new service -- World News Service; a recent closed-door meeting of the NTIS advisory board; and development of a proposal to turn NTIS into a public corporation outside of open public scrutiny. Many of the issues I raise here have been brought to your attention before and have been outlined in testimony before Congress. Your lack of response to our earlier expressions of concern, including specifically IIA's letter of January 5, 1996 (attached), do not obviate the fact that the practices implemented by your agency continue to be in violation of federal law and threaten continued access to a valuable government information resource.

First, it has recently come to our attention that NTIS continues to issue Database Agreements which are in conflict with an important information policy law, the Electronic Communications Privacy Act, specifically 18 USC §2703. As IIA has noted before, this section of the law makes it illegal for information service providers to reveal subscriber information to a government entity unless the government uses an administrative subpoena; unless it obtains a warrant or a court order; or unless the subscriber grants specific consent. Nevertheless, the Database Agreements issued by NTIS since our January letter continue to include provisions calling for private sector resellers to provide your agency with subscriber information of the kind outlawed under 18 USC §2703.

Second, the Database Agreements continue to show blatant disregard for the mandates of P.L. 104-13. Last year, during conversations organized by the Office of Management and Budget ("OMB"), you clearly stated to IIA representatives that NTIS believed certain provisions of its 1995 agreements to be in violation of the newly enacted Paperwork Reduction Act. Moreover, you indicated at that time that NTIS would attempt to revise the 1996 agreements to

eliminate this inconsistency with the law. Contrary to your statements of last year, the 1996 agreements not only continue the practices that are in violation of P.L. 104-13, but compound them. As before, the difficulties we have with the new agreements are with both the philosophy underlying them, and the specific contractual provisions.

The tenet underlying the agreements — turning taxpayer-generated public data into a commercial asset of NTIS — is anathema to the goal of ensuring the widest possible access to government information through a diversity of public and private sources as envisioned by P.L. 104-13. This sense of NTIS as proprietor of the data is evident throughout the Database Agreements. One particular Section entitled "Maintaining the Value of the Database," makes it clear that NTIS — like a for-profit company — is trying to protect its product by restricting use of its databases. The problem with NTIS's philosophy is that the product being protected is important federal government information which is collected at taxpayer expense. Because the public's use of government information is a right, not a privilege, any person who has acquired public information should be free to use it, sell it, or otherwise disseminate it for any legal purpose without paying any additional fees or royalties for it.

Apart from these as yet unresolved problems with the Database Agreements, it has also come to our attention that NTIS has implemented a new information service, the World News Connection, which is in direct competition with products and services provided by several of our member companies. The information being provided by the service, news clippings from the CIA's Foreign Broadcast Information Service, clearly is well outside the scope of NTIS' authorizing statute — which allows for the collection and dissemination of only scientific, technical and engineering information. We also understand that NTIS has negotiated royalty agreements with the foreign publishers to reproduce this information — agreements which by their very nature imply unwarranted, direct competition with current private sector activities. This is yet another example of NTIS acting as business rather than as a governmental agency in compliance with P.L. 104-13, one of whose primary purposes is to increase access to federal government information. Specifically, we believe that NTIS violated Section 3506(d)(3) of P.L. 104-13 when initiating this service without adequate notice to the public and without receiving comment regarding the service.

IIA is also aware that in mid-June NTIS held an advisory board meeting which was closed to the public to whom the agency is ultimately responsible. The *Federal Register* notice announcing the meeting stated, "The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services." These are clearly issues not only of interest, but of great financial impact to IIA members and their customers, as well as other members of the public. Clearly, it is inappropriate for a public agency like NTIS to discuss policy issues affecting the public interest in meetings that are closed to the public. However, the notice went on to state, "The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans." We believe that NTIS' function and purpose is not to be "in business" but rather to provide broad dissemination of scientific, technical and engineering information in an open and forthright manner that encourages public accountability.

Finally, we have heard and seen reports of a current NTIS proposal to turn NTIS into a public corporation. The proposal has not been circulated publicly; thus, industry has not had an opportunity to provide input. Nevertheless, this type of proposal has the potential to have a

significant impact on private sector information providers especially if, as at least one newsletter report suggests, the proposal seeks to exempt NTIS from P.L. 104-13. It would be unfortunate if unlike other responsible governmental agencies who are contemplating public corporation status -- namely the Patent and Trademark Office -- NTIS does not seek broad public review of its plans.

As stated above, NTIS' practices during the last year are clearly in violation of important information policy laws -- not to mention good and ethical government practices. They may be good practice for the "business" of NTIS, but both federal law and decades of sound information policies demonstrate these practices are not good for the businesses and citizens of America. If these various proposals stand or move forward, they will chill the desire of commercial vendors, as well as nonprofit institutions and organizations, to use the valuable information held by NTIS to increase the public's ability to gain knowledge about critical scientific, technical, engineering and business information.

Again, we strongly urge you to adhere to both the letter and spirit of 18 USC §2703, P.L. 104-13, and sound practices of open government by (1) revising current and future Database Agreements; (2) stopping the practice of competing directly with private sector providers, including those who offer products similar to your newly created World News Service; and (3) releasing information about both the recent proceedings of the Advisory Board meeting and the proposal to turn NTIS into a public corporation.

Sincerely yours,



Ronald G. Dunn
President

Enclosure

CC: Honorable Mickey Kantor
Honorable John W. Warner
Honorable Wendell H. Ford
Honorable William F. Clinger
Honorable Steve Horn
Sally Katzen, Director, Office of Information and Regulatory Affairs
Bruce McConnell, Office of Information and Regulatory Affairs



UNITED STATES DEPARTMENT OF COMMERCE
National Technical Information Service
5285 Port Royal Road
Springfield, Virginia 22161
OFFICE OF THE DIRECTOR

September 20, 1996

Mr. Ronald G. Dunn
President, Information Industry Assn.
1625 Massachusetts Avenue, NW
Suite 700
Washington, D.C. 20036

Dear Mr. Dunn:

Thank you for your recent letter questioning a number of our information dissemination practices. I hope that you and Mr. Duncan will find the following responsive to your concerns.

Subscriber Information:

Your first question concerned provisions in our database agreements asking our distributors to provide certain subscriber information. As your letter correctly stated, the Electronic Communications Privacy Act permits service providers to reveal subscriber information to us only if they have consent or under certain other conditions. We expect our distributors to comply with their legal obligations and to take appropriate steps to ensure that they have obtained the necessary consent.

We have recently revisited this matter. We have concluded that we do not need the names of subscribers who access databases. However, we do seek general information about subscribers so that we can ascertain usage patterns. Seeking and collecting such information in a manner that does not reveal individuals' identities is permissible under law and ensures that a database is serving the public's need.

A number of our distributors still prefer to give us their customer lists so we can make the relevant usage determinations. They prefer not to put themselves to the extra work of disaggregating the information and recompiling it in a way that meets our needs but does not identify specific subscribers. Accordingly, our policy is not to require names or addresses but to accept whatever usage pattern information format is most convenient to the distributor. However, we do not maintain this information in a manner that would permit us to retrieve it by any individual identifier.

Paperwork Reduction Act:

Your second question suggests that our Database Agreement violates the Paperwork Reduction Act. As you know, NTIS charges commercial redistributors an annual lease fee of \$10,000 plus forty percent of the revenue derived from the Database.

The PRA's overriding charge to agencies with respect to information dissemination is to maximize the public's access to government information. The PRA also contains specific requirements designed to further that objective. The drafters of the PRA recognized that, at times, implementing the Act in this area would require choices among a set of imperfect approaches. The Senate Governmental Affairs Committee (Senate Report 104-8 at p. 25) and the House Government Reform and Oversight Committee (House Report 104-37 at page 27) in discussing these requirements, independently noted that "Federal agencies must develop approaches and make specific dissemination decisions that balance among competing forces and interests." I believe NTIS has done this successfully.

NTIS, which receives no annual appropriations, charges fees that are calculated to enable it to recover the costs of providing a Bibliographic Database service, now about \$3 million per year. This includes the cost of collecting, sorting, abstracting and all related services that enable the public to find the technical information they want conveniently. In the electronic age, the task of bringing order to chaos will become increasingly important and NTIS' costs in doing so must be recovered by fees.

NTIS' approach is to enter into a revenue sharing arrangement with potential redisseminators who can add value to the Database and increase its availability to citizens who otherwise might not have knowledge about or access to it. There will also be a standard fee. This, we believe, helps to achieve public policy goals of avoiding restrictive arrangements and encouraging multiple access points, while allowing us to continue providing this important service.

The only other options are for (1) Congress to provide annual appropriations; (2) NTIS to shift costs to purchasers of other products and services; or (3) NTIS to charge a much higher fixed fee. The first is not favored by the Administration; the second would be unfair to NTIS's other customers; and the third would drive distributors away, thereby undermining the public policy of encouraging multiple access points for government information, as noted above.

Maintaining the Value of Databases:

Your third question relates to a section of our Database Agreement which specifically obligates distributors not to take any action that would undermine the investments made by NTIS and its other distributors. Our distributors, who have made significant investments that add value to the Database and enhance its usefulness to the public, recognize that the provision is there for their mutual protection. They have told us that they regard it as a major improvement over the former agreement. I believe they will be surprised to learn that you consider this provision to be inconsistent with the public interest. If their investments are jeopardized, their willingness to carry the product diminishes. That would seem to defeat the very policy of encouraging widespread access through a diversity of sources that you mentioned.

World News Connection:

Your fourth question related to World News Connection, which you said competes with private sector services and goes beyond NTIS' basic mission of providing scientific, technical and engineering information. WNC is the electronic version of the Foreign Broadcast Information Service Daily Reports that NTIS has distributed for the past 25 years. These reports are compiled by the intelligence community from open source material around the globe to aid federal policy officials. The intelligence community has announced that it will no longer make this product available in print.

This meant that a valuable resource would have been lost to the public unless some action were taken. Two years ago NTIS agreed to undertake the responsibility of making it available through FedWorld, its electronic platform that many agencies use for communicating with their constituents. This required us to establish a process for ensuring that international copyrights were honored and their owners paid a portion of any revenues derived from this service.

We do not believe that that the public would be better served if this information were no longer available to it, and we do not understand why you believe the electronic version competes with the private sector when we have heard no similar complaints about the printed version. If this same broad collection of information were currently compiled and translated by someone in the commercial sector, the intelligence community would undoubtedly leap at the opportunity to buy it. The fact that the intelligence community continues its current practices suggests that it has no viable alternative.

In arranging its copyright clearances for the WNC, NTIS made certain to include a provision that would permit us to license the WNC to private sector resellers. If any of your members have an interest in this they should be encouraged to contact me.

Before moving on, I would also like to clarify our policies regarding the type of information we disseminate. Our basic obligation is to maintain a permanent repository of scientific, technical and engineering information, which has been broadly construed by the Comptroller General to include business-related information.

Closed Meeting of the Advisory Board:

The Board met in closed session at the request of its chair and with the concurrence of the Department's General Counsel to discuss business aspects of joint ventures with the private sector, which NTIS is authorized to enter into pursuant to its organic legislation and which involve proprietary information. You have objected to our discussion of such matters in private in part because you apparently do not believe we should be "in business." We believe that joint ventures are an appropriate way for agencies to make information products available to the public that would otherwise be discontinued or that would cause agencies to discontinue some other publication or service, and at no cost to the taxpayers. As long as we are required to operate on earned revenues, we believe we must operate in a business-like fashion.

Corporate Status:

NTIS is proud to have been selected by the Administration as a candidate for status as a Performance Based Organization to be known as the National Technical Information Service Corporation, which more accurately reflects the businesslike nature of our operations. We have sought the counsel of our Advisory Board which is composed exclusively of private sector experts in information use and dissemination and we do not believe the legislation contains any provision that will have an adverse impact on private sector information providers. Our PBO proposal is in final stages of the formal Executive branch clearance process so we cannot make the details of the actual text public. However, I have provided numerous briefings on the PBO process and the authorities we seek. We have also made quite public our plans and intentions in interviews with the press. I would be delighted to share these views with IIA, but have never been asked.

In conclusion, I regret that you have so many problems with us. You have not hesitated to be frank with me, so I am sure you will not object if I

respond in like manner. The basic problem, from my perspective, is that IIA is unwilling to recognize or accept that NTIS receives no appropriations for operations and must, by law, recover all its costs. While NTIS is trying to accommodate competing interests, you appear to see things in terms that allow no compromise and you are taking positions, such as that described in Item III, that do not appear to be in the best interests of our distributors, who are also part of the information industry. .

I would be delighted to meet with you and any of your members who have specific concerns about our practices and policies. We would be happy to host a meeting at NTIS at your convenience.

Sincerely,

A handwritten signature in black ink, reading "Donald R. Johnson". The signature is written in a cursive style with a large, stylized "D" and "J".

Donald R. Johnson
Director

Mr. HORN. The gentleman from New York.

Mr. OAKLEY. If I might add?

Mr. OWENS. Go ahead.

Mr. OAKLEY. I was just going to answer your question, but if you wanted to pursue this other issue, that's fine.

Mr. OWENS. There's a larger problem of a great amount of mushrooming messiness with respect to policy. Who can deal with fugitive publications, for instance? The law is supposed to require that they funnel the publications in a certain way so that they eventually get into the depository libraries.

If they are not doing that, if agencies are not doing that, if electronic publishing formats allow them to flout the regulations even more or ignore them, then who can get a handle on this? Do we need a stronger Joint Printing Committee? Do we need some other body to supersede the Joint Printing Committee?

Who should make the policies with respect to NTIS suddenly deciding it wants to do a certain kind of information product? The Census Bureau will only produce its information in electronic format.

I mean, Congress has obviously allowed them to proceed on that, but if it does not work, and if it does what I think it's going to do, continue to deny census information to people who very much need it, continue to put our libraries in a very bad position, because many of them cannot handle electronic formats, and they very much need information about the census, who is it who is going to be able to respond to the grievances and the inadequacies, and be able to adjust it with some kind of authority, is the question?

Ms. LECHNER. Mr. Owens, we believe that it is Congress' role, and we would support anything that Congress did, in terms of legislation, to rein agencies in. Frankly, we think that GPO has done a good job with the publications that go through it. We think that agencies need to be reined in, and we believe that only Congress can do that.

Mr. OWENS. Well, "Congress" is too general. Congress ultimately creates some body. You need something which is closer to the situation, that has the authority of Congress behind it, which will keep up. These are changes that are taking place quite rapidly. For Congress to try, as a body, to stay on top of it, is insufficient. You need something beneath it, something with some real authority and power.

Yes, Mr. Oakley.

Mr. OAKLEY. Mr. Owens, we don't have an answer to the specific question as to who should do it, but we certainly agree with the general notion that was just expressed that there certainly needs to be greater attentiveness to the enforcement problem.

Some have spoken about some kind of punitive chargeback to the agency when they fail to comply with the requirements of the law, but it is clear that stronger efforts need to be made in terms of enforcement. More and more documents are falling through the cracks and not getting into the depository system.

Mr. OWENS. What do you consider the long-term impact of the Census Bureau deciding it's only going to publish information in electronic format? What impact will that have on libraries, in your opinion, Mr. Oakley?

Mr. OAKLEY. A lot of the data was already distributed in electronic format. For some researchers, that's fine, but for many users, that's just not enough. They need the kinds of paper documents that they have received in the past. They are not in a position to be able to, as we described earlier, download lengthy documents.

This is really a cost-shifting kind of function. If people are being asked to print out lengthy documents at their terminals, instead of printing costs being borne centrally, at a relatively modest cost to the Government, it is being borne individually throughout the Nation, when documents are downloaded and printed time and time again, taking many hours to do that.

It is not efficient, it is costly, and it is cost-shifting. I think it's a serious problem.

Ms. LECHNER. Mr. Owens, if I could followup to your earlier question with a little bit more detail. One of the things that we've often recommended is that Congress should make sure that the agencies who do their own printing have their authority rescinded. It could be done over a period of time, like sunseting over 18 months. Then they can review to see whether they really need to have those facilities.

We think that the problem with fugitive documents is that they are being printed in places where GPO has no control over them. Congress has given that authority, over the years, to these agencies to do this printing. It's time to reel them back in and say, if they are not going to abide by the requirements of Title 44, that they should not have the right to be printing. And we think that that would be a good start in clearing up some of the problems of documents getting away from the system.

Mr. OWENS. Yes, Mr. Jones.

Mr. JONES. Yes. In our case, as I mentioned in my comments, my specific case, as I understand it, OIRA is there to enforce the Paperwork Reduction Act, and that, at least in my case, does not appear to be happening. And I think that that would be the opinion of many in my industry that there is an enforcement facility there, but it isn't working.

Mr. OWENS. What do you think, Mr. Jones, of the idea of requiring all operations, such as the census, if they insist that they are going to produce only in electronic format, becoming self-sufficient, in terms of they must pay their own costs?

Mr. JONES. That's interesting.

Mr. OWENS. American taxpayers are being denied information in certain formats. It's only electronic format; it's no longer really public, as it was before. What would happen if we say, you must become self-sufficient, and charge people who are using it, and pay your own way?

[The information referred to follows:]

In this dialog, Mr. Owens asks two questions. First, should agencies be required to become self-sustaining? Second, should commercial users of information have to pay higher costs for government information since they use it to create products and services which they sell?

We believe the two questions are interrelated and we have concerns about both issues. Agencies that are required to be self-sustaining, may look to the information they create or collect as a means of generating revenue. In so doing, they may -- as NTIS has done -- use pricing schemes or place use restrictions on the information to protect their market just as a for-profit information company would. The problem with this type of scenario, of course, is that the information that is being "protected" is underlying government information, created at taxpayer expense, which should be available to any and all users.

We understand that the Subcommittee will be holding a hearing on Performance Based Organizations (PBO's) in early July. One aspect of most PBO's is either self-funding or revolving fund authority. As taxpayers, we appreciate the benefits of government agencies performing their duties more efficiently and effectively. However, we would suggest that the Subcommittee carefully examine the issue of government held information being used as a source of revenue. We will provide written testimony for the hearing which will give more specific examples of the problems associated with self-funding agencies.

With respect to the issue of a two-tier pricing scenario, experience shows that the lower the price that government charges for access to its records, the more people will be able to use it. To the contrary, when government agencies place a "value" on the information they hold and then condition the release of that information on the value, the agency is exercising a copyright-like control.

Under Section 105, Title 17 USC, federal government agencies are prohibited from claiming copyright in government information. The government should not make a profit selling to the public -- including private sector redisseminators -- information collected and compiled at taxpayer expense. Moreover, governmental agencies should not charge excessive fees for the information which will keep some commercial providers out of the market. The government is in the business of providing public services, not commercial services.

On the other hand, the Association believes that the cost of reproduction and delivery of any government information should be paid by the individual or business requesting the information. As Mr. Jones stated during the hearing, "The cost of dissemination, [i]s fair to pass on."

Mr. JONES. Well, I think it depends on what's the cost involved. The cost of dissemination, I can certainly agree with: the cost of printing, the cost of producing a tape, the cost of putting it up on the Web. But the cost of producing the data, that's the Government's job. The cost of dissemination, I think, is fair to pass on.

Mr. OWENS. American taxpayers make a tremendous investment in the census data. We pay for it.

Mr. JONES. Right, and they should get that.

Mr. OWENS. And it's outrageous to have a result where we can't even get the information because it's only in a format which relatively few people are able to utilize at this point. Let's not kid ourselves, we are not yet—the telecommunications revolution is really not taking place yet. We only talk about it.

There are large numbers of places in the country that don't have the capacity, and it is costly. We ought to look at depository libraries and see what obligations Congress has to make funds available to guarantee that that cost of downloading and printing at the receiving end is borne partially by the Government. Otherwise, we are distorting the original mission of the Government depository libraries.

Thank you very much, Mr. Chairman.

Mr. OAKLEY. May I address that last question?

Mr. HORN. Please.

Mr. OAKLEY. Mr. Owens, the trend, and there has been something of a trend in recent years for the Government to charge for various information products, is a bit of a slippery slope. And like Mr. Jones, we accept the notion that sometimes there need to be charges, perhaps the marginal cost of dissemination or something like that, but the danger point comes when it erodes the Depository Library Program.

So, for example, you have the NTIS, which has all of its publications, but they are not generally made available to the depository library program. So if you do move in that direction of some kind of low-fee access to that information, you do need to carve out an exception for depository libraries.

Mr. OWENS. Thank you.

Let me clarify what I really was trying to say. The private sector could pay. At the same time, fees realized from the private sector should be utilized to guarantee that the public sector, like depository libraries, are available and kept available. That's where I was really heading.

The private sector is going to use the data, repackage it, and sell it; they can pay a fee, and some of that fee can be used to offset the cost of the Government depository libraries having the same information available, in the usual formats, to everybody through the Government depository system.

Mr. OAKLEY. Sounds good to us.

Mr. HORN. This has been a very interesting dialog. I think we delude ourselves sometimes in that we think electronic access is going to solve the problem. And I think your example of that sentencing report is a good one, that somebody might be paying for those pages I don't know how many times. Usually, the poor student that is gouged by the university library, I might add. We

would think that maybe you could get those rates down to 5 cents a page, not 10 and 25.

You can see this is the professor in me talking, and I'm also the one that is the great user of the library. So I just have a strong feeling that, when you look at the economics of something like that Sentencing Commission report—and I'm going to ask the staff to followup on that—why we can't still issue those reports. If they also want to have an electronic data base, great, but somewhere the student should be able to touch it, see it, feel it, and find it.

That's what I feel is sometimes missing. The wonders of electronic storage are great. And in terms of searches, they are certainly much better than the indexes I've seen in most Government publications. But what gets me is that, when an agency such as the Sentencing Commission only makes it available electronically, yet they do have them printed somewhere—and I guess that's where you get them.

Did they print their own editions on this?

Mr. OAKLEY. As near as I can tell, it was printed by GPO.

Mr. HORN. A limited edition.

Mr. OAKLEY. Yes, and it was being distributed in microform, and must have been caught up in some sort of backlog in the production of the microform product. So the depository libraries would, we presume—it's not in my library—yet—eventually get the microform version, but not the paper version.

But in the course of the backlog, the material had been published, it had been printed, but researchers didn't have access to it.

Mr. HORN. I think Government documents should be immediately available, and anybody who wants to tap in and print them out on their own computer, that's wonderful. We shouldn't have to pay \$500-an-hour lobbyists to get documents that the business or labor union or Government agency, local or State, and universities, and the individual want to read. I think that's a real encroachment on freedom of information.

So you've been a very helpful panel. If you have some more thoughts on any of these as you drive home, or fly home, as the case may be, please write us. We will put those notes in the record. We keep the record open for a number of weeks, and any other exhibits you think would be useful so we can understand this and ultimately write an oversight report on the issue, we would appreciate.

If there are no further questions by members of the committee, I am now going to thank the people that put the hearing together.

J. Russell George is the staff director for the subcommittee, seated in the back, observing all; without him, it doesn't happen. The gentleman to my left and your right is Mark Uncapher, the counsel to the subcommittee, who was particularly responsible for this hearing. John Hynes, professional staff member, was in the room.

Andrea Miller, our clerk, very helpful in putting these together

and picking up the pieces afterwards. David McMillen, on the Democratic side, Mark Stephenson, both professional staff members on the Democratic side. Jean Gosa, the clerk for the minority. And Barbara Smith, our court reporter today.

Thank you very much. With that, this hearing is adjourned.

[Whereupon, at 11:55 a.m., the subcommittee was adjourned.]

